

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ZOVO LINGERIE COMPANY, LLC, a  
Washington Limited Liability Company,

Plaintiff,

v.

DMH ENTERPRISES, INC., a Nevada  
corporation, and DEANNA HODGES, an  
individual, collectively doing business as ZOVA  
LA,

Defendants.

No.

COMPLAINT FOR TRADEMARK  
INFRINGEMENT, UNFAIR  
COMPETITION, VIOLATION OF  
CONSUMER PROTECTION ACT,  
AND DECLARATORY  
JUDGMENT

Plaintiff, Zovo Lingerie Company, LLC ("Plaintiff"), as and for its Complaint,  
alleges as follows:

**NATURE OF ACTION**

1. This is an action based on Plaintiff's rights in its federally registered  
trademark ZOVO. Based on Plaintiff's superior rights to its mark ZOVO, Plaintiff seeks  
(1) an injunction stopping Defendants from using the mark ZOVA on the grounds that said  
use constitutes, inter alia, trademark infringement and unfair competition; and (2) a  
declaratory judgment that its ZOVO trademark does not infringe any rights that

1 Defendants may have in the mark ZOVA. Plaintiff also seeks recovery of its damages and  
2 attorneys' fees, and Defendants' profits.

3 **THE PARTIES**

4 2. Plaintiff Zovo Lingerie Company, LLC is a limited liability company  
5 organized and existing under the laws of the state of Washington with a business address at  
6 4231 West Marginal Way S.W., Seattle, Washington 98106.

7 3. Upon information and belief, Defendant Deanna Hodges ("Hodges") is a  
8 resident of the state of California using an address of 4001 MacArthur Boulevard, Suite  
9 105, Newport Beach, California 92660.

10 4. Upon information and belief, Defendant Hodges is the owner of Defendant  
11 DMH Enterprises, Inc. ("DMH"), a corporation organized under the laws of the state of  
12 Nevada with an address at 1032 Goldenrod Avenue, Corona, California 92625.

13 5. Upon information and belief, Defendants Hodges and DMH operate a  
14 business under the assumed name ZOVA LA ("Zova") using a physical address of 4001  
15 MacArthur Boulevard, Suite 105, Newport Beach, California 92660.

16 6. Defendants Hodges and DMH are referred to collectively herein as  
17 "Defendants".

18 7. One or both of the Defendants operate a website at <http://www.zovala.net>,  
19 which offers ZOVA branded products for sale in its "Online Store" section. Said products  
20 are purportedly available for purchase nationally including in this district.

21 **JURISDICTION AND VENUE**

22 8. This action for trademark infringement and false designation of origin and  
23 unfair competition arises under the Trademark Act of July 5, 1946 (the "Lanham Act"), as

1 amended, United States Code, Title 15, § 1051, et seq., the laws of the State of Washington  
2 and the common law. The state and common law trademark and unfair competition claims  
3 are related to the substantial claims arising under federal law.

4 9. This Court has subject matter jurisdiction over the federal trademark claims  
5 in this Complaint under United States Code, Title 15, § 1121 and Title 28, §§ 1331 and  
6 1338; and original and supplemental jurisdiction over the related state law claims under  
7 United States Code, Title 28, §§ 1338(b) and 1367.

8 10. This action for a declaratory judgment arises under, and jurisdiction in this  
9 Court is proper under, 28 U.S.C. § 2201.

10 11. A substantial part of the events giving rise to the claims herein occurred in  
11 this judicial district and venue is therefore proper in this Court pursuant to 28 U.S.C.  
12 § 1391(b).

### 13 **THE FACTS**

#### 14 **PLAINTIFF'S ZOVO MARK**

15 12. After Plaintiff's founder spent years developing and researching the better  
16 shopping experience concept that is behind the ZOVO brand, Plaintiff began selling  
17 ZOVO products and opened the first ZOVO store on May 12, 2005. Plaintiff's ZOVO  
18 store is located in a prime shopping area of Seattle known as University Village, close to  
19 other well-known stores such as Banana Republic and Cole Haan. The ZOVO store carries  
20 a variety of women's clothing items, including lingerie, as well as unique gifts, and spa  
21 items such as perfumes and oil.

22 13. In addition to third party brands of clothing and other items, the ZOVO  
23 store carries a collection of products sold under the ZOVO brand name. These ZOVO-

1 branded items currently include lingerie, tank tops, shorts, camisoles, robes, chemises,  
2 dresses, hoodies, shirts, lounge pants, pajamas and shells.

3 14. The research conducted by Plaintiff's founder prior to opening the ZOVO  
4 store included consultations with an attorney regarding the availability of, and protection  
5 for, the ZOVO brand name. Plaintiff was incorporated using the ZOVO name in the State  
6 of Washington on February 3, 2005. Federal trademark applications for the ZOVO mark  
7 were filed on November 19, 2004 and March 16, 2005, resulting in the following U.S.  
8 Trademark Registrations currently owned by Plaintiff:

9 <u>MARK</u>	<u>REG. NO.</u>	<u>REG. DATE</u>	<u>GOODS</u>
10 ZOVO	3,110,468	June 27, 2006	lingerie in Class 25
11 ZOVO LINGERIE & Design	3,110,591	June 27, 2006	lingerie in Class 25

12 15. The ZOVO registrations are in full force and effect and copies are attached  
13 hereto as Exhibits A and B. The first registration, No. 3,110,468, entitles Plaintiff to a  
14 nationwide right of priority in the ZOVO mark as of the filing date of November 18, 2004.

15 16. Plaintiff also has two pending federal trademark applications for the mark  
16 ZOVO. One is based on use of the ZOVO mark in commerce and covers retail store  
17 services and various items of women's clothing (shorts, jackets, dresses, sweaters, robes,  
18 pajamas, lounge wear, camisoles, slips, tank tops, t-shirts, underwear). The second  
19 application is based on an intent to use the ZOVO mark in commerce and covers numerous  
20 goods in Classes 3 (such as perfume), 4 (such as candles), 18 (such as luggage) and 24  
21 (such as bedding).

22 17. In addition to its retail store, Plaintiff operates a website at  
23 <http://www.zovolingerie.com>. The ZOVO website is a fully operational e-commerce site

1 that offers a variety of women's clothing products, including the ZOVO brand collection,  
2 as well as spa items. Plaintiff's ZOVO products are also carried in Nordstrom stores and  
3 the ZOVO collection is also distributed through approximately 70 independent boutiques  
4 nationally, including eight boutiques in California.

5 18. Since their introduction, Plaintiff's ZOVO store and products have received  
6 numerous accolades, including the 2006 Best Lingerie Reference Shop in North America  
7 award from Best of Intima.

8 19. Plaintiff's ZOVO mark is inherently distinctive.

9 20. As a result of Plaintiff's use and promotion of the ZOVO mark, the ZOVO  
10 mark has come to represent Plaintiff and is of great value to Plaintiff. The ZOVO mark  
11 identifies and distinguishes Plaintiff's goods and services from the goods and services of  
12 others and symbolizes the goodwill of Plaintiff's business.

13 21. Based on the success of Plaintiff's ZOVO store and website, Plaintiff has  
14 secured financing for expansion and is currently planning for expanding its ZOVO  
15 collection of branded products and for opening additional ZOVO stores.

#### 16 DEFENDANTS' ZOVA MARK

17 22. Upon information and belief, nearly 20 months after Plaintiff's federal  
18 application for ZOVO was filed on November 18, 2004, on or about July 2006, Defendants  
19 secured the domain name zovala.net.

20 23. Upon information and belief, Defendants did not operate any website using  
21 the ZOVA mark until June 2007. Defendants currently have a website at zovala.net that  
22 uses the ZOVA mark and offers women's clothing and skin care items. The women's  
23 clothing is offered using various names (such as the "Marilyn" dress and the "Marilyn"

1 shirt) and is presented with links to enable the Internet user to purchase the items over the  
2 Internet through a service provided by the third party e-commerce provider PayPal. The  
3 skin care items are shown using the ZOVA mark on the items but are not listed with links  
4 that would enable the Internet user to purchase the items over the Internet.

5 24. Defendants' website does not list any physical address for Defendants and  
6 provides only the email address deanna@zovala.net under the heading "Contact". The  
7 heading "Press" includes one press release dated October 14, 2007. The press release  
8 includes the same email address contact information along with an 800 telephone number,  
9 but no physical address for the business.

10 25. Upon information and belief, nearly three years after Plaintiff's federal  
11 application for ZOVO was filed on November 18, 2004, on or about September 26, 2007,  
12 Defendants filed or caused to be filed a notice with the California Department of  
13 Corporations indicating that Defendant DMH will do business in California as "Zova LA."  
14 Upon information and belief, the first public filing indicating that Defendants planned to  
15 do business in California using the ZOVA mark was a registration with the Orange County  
16 Clerk in April 2007.

#### 17 CONTACTS BETWEEN THE PARTIES

18 26. On or about October 19, 2007, Defendants' use of the mark ZOVA first  
19 came to Plaintiff's attention. At that time, Plaintiff became aware of an advertisement  
20 placed by Defendants in the October 12, 2007 edition of California Apparel News. On  
21 information and belief, said advertisement was the first such ad placed by Defendants in  
22 California Apparel News.  
23

1           27.     After Plaintiff's discovery of the ZOVA advertisement in the October 2007  
2 magazine, Plaintiff wrote to Defendants requesting that they cease and desist from the use  
3 of ZOVA. A copy of Plaintiff's October 25, 2007 letter is attached hereto as Exhibit C.

4           28.     By letter dated November 9, 2007, counsel for Defendants responded to  
5 Plaintiff's letter. Defendants' November 9, 2007 letter indicates it was faxed but was not  
6 received by Plaintiff until the original arrived in the mail on November 19, 2007. A copy  
7 of Defendants' November 9, 2007 letter is attached hereto as Exhibit D. Defendants'  
8 November 9, 2007 letter asserted that Defendants have used the ZOVA mark since 2001  
9 and requested that Plaintiff cease use of ZOVO.

10          29.     Plaintiff responded by letter dated November 21, 2007, noting that  
11 Defendants' website was only recently launched and asking for materials sufficient to  
12 demonstrate the nature and extent of Defendants' use of the ZOVA mark prior to 2007. A  
13 copy of Plaintiff's November 21, 2007 letter is attached hereto as Exhibit E.

14          30.     Plaintiff did not receive a response to its November 21 letter and sent  
15 follow-up letters dated December 14, 2007 and January 30, 2008, copies of which are  
16 attached as Exhibits F and G, respectively.

17          31.     Defendants responded by letter dated February 4, 2008, which was faxed to  
18 Plaintiff on February 6, 2008. A copy of Defendants' February 4, 2008 letter is attached as  
19 Exhibit H. Defendant's February 4, 2008 letter included an affidavit from a clothing  
20 manufacturer in the Los Angeles area stating that he had been making clothing for  
21 defendant Hodges since 2001 "under several different labels and trademarks" and with the  
22 label "ZOVA LA". No indication was given as to volume, continuity or the geographical  
23

1 distribution of those sales, or as to prominence of the use of ZOVA LA on the product  
2 labeling.

3 32. Defendants' February 4, 2008 letter asserts that Plaintiff's use of ZOVO is  
4 confusing, repeats Defendants' request that Plaintiff cease use of ZOVO, and states that if  
5 they do not receive Plaintiff's response by March 12, 2008, Defendants may have to take  
6 appropriate steps to protect ZOVA LA's intellectual property rights.

7 **PLAINTIFF'S PRIOR RIGHTS IN ITS ZOVO MARK**

8 33. On information and belief, any alleged use of the ZOVA mark by  
9 Defendants prior to November 18, 2004, was sporadic and/or very limited in scope,  
10 volume and/or geographic distribution and insufficient to give Defendants rights.

11 34. Upon information and belief, to the extent Defendants used the mark ZOVA  
12 starting in 2001, Defendants did not use the mark continuously from that date and  
13 Defendants abandoned whatever rights they may have had prior to Plaintiff's federal  
14 trademark application filing in November 2004.

15 35. Defendants' rights in its ZOVA mark, if any, are inferior to Plaintiff's rights  
16 in its ZOVO mark.

17 36. Defendants' rights in its ZOVA mark, if any, are limited in scope to any  
18 actual and continuous use of the mark by Defendants prior to Plaintiff's November 18,  
19 2004 federal application filing date and any subsequent efforts to restart or expand that use,  
20 including but not limited to the use of the mark in advertisements and on the Internet, are  
21 in violation of Plaintiff's rights.

22 37. Plaintiff has prior nationwide rights in its ZOVO mark.  
23



1           38.     Upon information and belief, Defendants' actions following receipt of  
2     Plaintiff's cease and desist letter have been willful and deliberate and not in good faith,  
3     rendering this an exceptional case.

4                                   **COUNT I**

5                           **FEDERAL TRADEMARK INFRINGEMENT**

6           39.     Plaintiff repeats and realleges each of the allegations set forth in paragraphs  
7     1 through 38 above with the same force and effect as if fully set forth herein.

8           40.     Defendants' use of the trade name and trademark ZOVA in connection with  
9     its business as described above constitutes use in commerce that is likely to cause  
10    confusion and mistake and to deceive consumers as to the source or origin of Defendants'  
11    products.

12          41.     Defendants' use of the trade name and mark ZOVA as described above  
13    constitutes infringement of Plaintiff's federally registered trademark in violation of § 32(l)  
14    of the Lanham Act, 15 U.S.C. § 1114(l).

15          42.     The aforesaid acts of Defendants have caused and, without judicial  
16    intervention, will continue to cause the Plaintiff irreparable harm for which there is no  
17    adequate remedy at law.

18                                   **COUNT II**

19                           **FEDERAL UNFAIR COMPETITION**

20          43.     Plaintiff repeats and realleges each of the allegations set forth in paragraphs  
21    1 through 38 above with the same force and effect as if fully set forth herein.

22          44.     Defendants' use of the trade name and mark ZOVA constitutes use in  
23    commerce that creates a false or misleading designation of origin which is likely to

1 deceive, to cause mistake or to cause confusion by leading consumers into believing that  
2 Defendants have an affiliation with Plaintiff, or are sponsored or approved of or by  
3 Plaintiff, or are otherwise associated with or have obtained permission from Plaintiff.

4 45. The aforesaid acts of Defendants constitute unfair competition in violation  
5 of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

6 46. The aforesaid acts of Defendants have caused and, without judicial  
7 intervention, will continue to cause the Plaintiff irreparable harm for which there is no  
8 adequate remedy at law.

9 **COUNT III**

10 **WASHINGTON CONSUMER PROTECTION ACT**

11 47. Plaintiff repeats and realleges each of the allegations set forth in  
12 paragraphs 1 through 38 above with the same force and effect as if fully set forth herein.

13 48. Defendant's use of the trade name and mark ZOVA constitutes an unfair  
14 and deceptive act or practice and an unfair method of competition in the conduct of trade  
15 or commerce in violation of RCW 19.86.020 that has harmed plaintiff in its business and  
16 property. Plaintiff is entitled to recover damages, treble damages up to \$10,000, and  
17 attorneys' fees pursuant to RCW 19.86.090.

18 **COUNT IV**

19 **COMMON LAW UNFAIR COMPETITION**

20 49. Plaintiff repeats and realleges each of the allegations set forth in  
21 paragraphs 1 through 38 above with the same force and effect as if fully set forth herein.

22 50. The acts of Defendants as described above constitute unfair competition in  
23 violation of Plaintiff's rights under the common law of the State of Washington.

**COUNT V**

**DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

51. Plaintiff repeats and realleges each of the allegations set forth in paragraphs 1 through 38 above with the same force and effect as if fully set forth herein.

52. The Defendants' conduct as alleged herein has created a real or reasonable apprehension on the part of the Plaintiff that Defendants will file suit against Plaintiff.

53. Plaintiff, by its continued use of its ZOVO mark and planned expansion of its use of its ZOVO mark, has engaged in a course of conduct bringing it into an adversarial conflict with Defendants.

54. As such, an actual controversy exists between the parties and Plaintiff is entitled to a judgment declaring the respective rights of the parties pursuant to 28 U.S.C. § 2201 and in particular to a judgment declaring that Plaintiff has prior nationwide rights in its ZOVO mark and is not infringing any rights that Defendants may have in the ZOVA mark.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

1. A judgment ordering Defendants, their agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with the Defendants or any of them, to be preliminarily and then permanently enjoined and restrained:

a. From using the mark ZOVA as a trademark, service mark, trade name or otherwise, and any colorable imitation thereof, including but not limited to the

1 name and mark "ZOVA LA" and any name or mark confusingly similar to or likely to  
2 cause confusion with the ZOVO trademark;

3 b. From representing by any means whatsoever, directly or indirectly,  
4 that Defendants or any products or services offered by Defendants, are associated in any  
5 way with Plaintiff or its products or services, and from otherwise taking any other action  
6 likely to cause confusion, mistake or deception on the part of purchasers or consumers; and

7 3. From doing any other acts or things calculated or likely to cause  
8 confusion or mistake in the mind of the public or to lead purchasers or consumers into the  
9 belief that Defendants' products or services come from or are the products or services of  
10 Plaintiff, or are somehow sponsored or underwritten by, or affiliated with, Plaintiff, and  
11 from otherwise unfairly competing with Plaintiff or misappropriating that which rightfully  
12 belongs to Plaintiff.

13 2. A judgment ordering Defendants to relinquish the registration of the domain  
14 name "ZOVALA.NET" and all other registrations of domain names that colorably imitate  
15 Plaintiff's ZOVO mark, and transfer said registration(s) to Plaintiff and that Defendants be  
16 limited to use of a domain name or names that do not use the ZOVA trademark, any  
17 colorable imitation of the ZOVO trademark, or any name or mark confusingly similar  
18 thereto or likely to cause dilution of the distinctiveness of such trademarks or injury to  
19 Plaintiff's business reputation.

20 3. A judgment ordering Defendants to amend the records of the California  
21 Secretary of State to delete any reference to the ZOVA in its business name and that  
22 Defendants be limited to use of a corporate name that does not use the ZOVA trademark,  
23

1 any colorable imitation of the ZOVO trademark, or any name or mark confusingly similar  
2 thereto or likely to cause confusion with the ZOVO trademark.

3 4. A judgment ordering Defendants to file with this Court and to serve on  
4 Plaintiff within thirty (30) days after the service of the injunctions a report in writing under  
5 oath, setting forth in detail the manner and form in which Defendants have complied with  
6 the foregoing injunctions.

7 5. A judgment ordering that Plaintiff recover (i) Defendants' profits, (ii)  
8 Plaintiff's damages, which amount may be trebled by the Court, and (iii) the costs of the  
9 action, pursuant to 15 U.S.C. § 1117(a) and Washington statutory and common law.

10 6. A judgment ordering Defendants to pay Plaintiff all its reasonable taxable  
11 costs, disbursements and attorney's fees in a sum and manner deemed appropriate by this  
12 Court based on the deliberate and willful acts of Defendants pursuant to 15 U.S.C.  
13 § 1117(a) and based on the violation by Defendants of RCW 19.86.090.

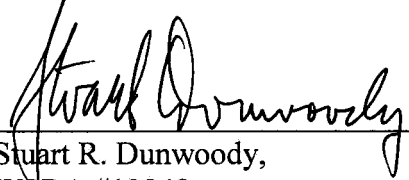
14 7. A judgment determining and declaring that Plaintiff has superior rights in  
15 its ZOVO mark and Plaintiff has not infringed any rights that Defendants may have in the  
16 mark ZOVA.

17 8. A judgment ordering such other and further relief as the Court may deem  
18 just and proper.  
19  
20  
21  
22  
23

1 DATED this 7th day of March, 2008.

2 Davis Wright Tremaine LLP  
3 Attorneys for Plaintiff Zovo Lingerie  
4 Company, LLC

5 By

  
6 Stuart R. Dunwoody,  
7 WSBA #13948

8 Suite 2200  
9 1201 Third Avenue  
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14  
15  
16  
17  
18  
19  
20  
21  
22  
23

# EXHIBIT A

**Int. Cl.: 25**

**Prior U.S. Cls.: 22 and 39**

**Reg. No. 3,110,468**

**United States Patent and Trademark Office**

**Registered June 27, 2006**

**TRADEMARK  
PRINCIPAL REGISTER**

**ZOVO**

SAEZ, ENGLE E. (UNITED STATES INDIVIDUAL)  
5336 SW LANDER ST.  
SEATTLE, WA 98116

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: LINGERIE, IN CLASS 25 (U.S. CLS. 22 AND 39).

SN 78-520,453, FILED 11-19-2004.

FIRST USE 3-12-2005; IN COMMERCE 3-12-2005.

REBECCA GAN, EXAMINING ATTORNEY



# EXHIBIT B

**Int. Cl.: 25**

**Prior U.S. Cls.: 22 and 39**

**Reg. No. 3,110,591**

**United States Patent and Trademark Office**

**Registered June 27, 2006**

**TRADEMARK  
PRINCIPAL REGISTER**



ROBERTS, VICTORIA L. (UNITED STATES INDIVIDUAL)  
5336 SW LANDER  
SEATTLE, WA 98116

FOR: LINGERIE, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 3-12-2005; IN COMMERCE 3-12-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "LINGERIE", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORD, "ZOVO" IN DISTINCTIVE FONT, OVER THE WORD, "LINGERIE" IN DISTINCTIVE FONT, SURROUNDED BY A SCALLOPED OVAL WITH THREE ROSES IN THE LOWER PORTION OF THE OVAL.

SN 78-588,828, FILED 3-16-2005.

REBECCA GAN, EXAMINING ATTORNEY

# EXHIBIT C

# KING & SPALDING

King & Spalding LLP  
1185 Avenue of the Americas  
New York, New York 10036-4003  
www.kslaw.com

Maren C. Perry  
Direct Dial: (212) 556-2375  
Direct Fax: (212) 556-2222  
mperry@kslaw.com

October 25 , 2007

**Via UPS & Email to Deanna.Hodges@yahoo.com**

Deanna Hodges  
c/o Zova LA  
4001 Mac Arthur Blvd  
Suite 105  
Newport Beach, CA 92660

**Re: Zovo Lingerie Company, LLC - Objection to Use of ZOVA and ZOVA LA**

Dear Ms. Hodges:

We are trademark counsel to Zovo Lingerie Company, LLC ("Zovo"). Zovo owns a 2006 U.S. trademark registration for the mark ZOVO and a 2006 U.S. trademark registration for ZOVO & Design, both in Class 25 for "lingerie". A printout showing registration particulars from the U.S. Patent and Trademark Office website is attached as hereto. Zovo operates a retail store in Seattle, Washington under the name Zovo Lingerie and a website at <http://www.zovolingerie.com/>. ZOVO products are also carried in Nordstrom stores. The ZOVO mark has been used by our client since at least as early as March 2005 (with a priority filing date in 2004) and is exclusively associated with our client. Our client has received numerous accolades for its ZOVO store and product line, including the 2006 Best Lingerie Reference Shop in North America award from Best of Intima.

It has come to our attention that you have just started to use the mark ZOVA as the name of a retail store and clothing brand and have just launched a website at [www.zovala.net](http://www.zovala.net). As you can understand, we are concerned that consumers will mistakenly believe that your use of "ZOVA" and "ZOVA LA" is in some way affiliated or associated with our client's ZOVO mark for its website, lingerie and retail store. Such confusion appears to be inevitable because the marks are nearly identical, presented in similar fonts and used for similar goods and services. Given the similarities, your use of the ZOVA mark constitutes trademark infringement, false designation of origin and unfair competition in violation of our client's rights under the Lanham Act, 15 U.S.C. § 1051, et seq and state law. The addition of LA to your mark does not serve to distinguish the brands, as consumers are likely to think that LA designates the Los Angeles branch of the Zovo line.

Under the circumstances, we request that you immediately discontinue use of ZOVA or any other designation likely to cause confusion with the ZOVO mark.

October 25, 2007  
Page 2

We trust that you can appreciate our client's interest in protecting its ZOVO mark from infringement and eliminating confusion. We would like to resolve this matter amicably, if possible. To do so, however, we need your immediate response and cooperation in agreeing to change your mark. We would appreciate receiving your response in writing confirming removal of all infringing references by no later than **November 9, 2007**.

Nothing herein shall be deemed an admission or waiver of any rights or remedies of our client, all of which are hereby expressly reserved.

Very truly yours,

  
Maren C. Perry

MP/km  
Enclosures



United States Patent and Trademark Office

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**ZOVO**

Word Mark ZOVO  
 Goods and Services IC 025. US 022 039. G & S: Lingerie. FIRST USE: 20050312. FIRST USE IN COMMERCE: 20050312  
 Standard Characters Claimed  
 Mark Drawing Code (4) STANDARD CHARACTER MARK  
 Serial Number 78520453  
 Filing Date November 19, 2004  
 Current Filing Basis 1A  
 Original Filing Basis 1B  
 Published for Opposition October 18, 2005  
 Registration Number 3110468  
 Registration Date June 27, 2006  
 Owner (REGISTRANT) Saez, Engle E. INDIVIDUAL UNITED STATES 5336 SW Lander St. Seattle WASHINGTON 98116  
 (LAST LISTED OWNER) ZOVO LINGERIE COMPANY, LLC LLC 3513 NE 45TH ST. C/O ROBERT BASKERVILLE, SUIET 2W SEATTLE WASHINGTON 98105  
 Assignment Recorded ASSIGNMENT RECORDED  
 Attorney of Record John T. Sessions

Type of Mark TRADEMARK  
Register PRINCIPAL  
Live/Dead Indicator LIVE

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Word Mark	ZOVO LINGERIE
Goods and Services	IC 025. US 022 039. G & S: Lingerie. FIRST USE: 20050312. FIRST USE IN COMMERCE: 20050312
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	05.05.02 - Roses 26.03.07 - Ovals with a decorative border, including scalloped, ruffled and zig-zag edges
Serial Number	78588828
Filing Date	March 16, 2005
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	September 27, 2005
Registration Number	3110591
Registration Date	June 27, 2006
Owner	(REGISTRANT) Roberts, Victoria L. INDIVIDUAL UNITED STATES 5336 SW Lander Seattle WASHINGTON 98116  (LAST LISTED OWNER) ZOVO LINGERIE COMPANY, LLC LLC 3513 NE 45TH ST. C/O ROBERT L BASKERVILLE SEATTLE WASHINGTON 98105



**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** Robert Baskerville

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "LINGERIE" APART FROM THE MARK AS SHOWN

**Description of Mark** The mark consists of The word, "ZOVO" in distinctive font, over the word, "LINGERIE" in distinctive font, surrounded by a scalloped oval with three roses in the lower portion of the oval.

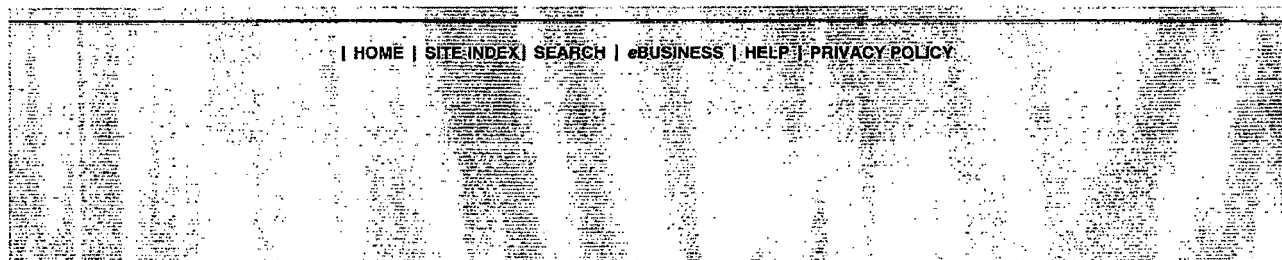
**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

TESS HOME NEW USER STRUCTURED FREE FORM Browse By SEARCH LOG TOP HELP PREV LIST CURR LIST

FILE LIST FIRST DOC PREV DOC NEXT DOC LAST DOC



# EXHIBIT D

Law Offices Of  
Roger E. Naghash

Roger E. Naghash  
Attorney at Law

4400 MacArthur Boulevard, Suite 900  
Newport Beach, California 92660-2040

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Telephones  
(949) 955-1000  
(949) 752-9500  
Fax: (949) 852-9511

November 9, 2007

Maren C. Perry, Esq.  
King & Spalding, LLP  
1185 Avenue of the Americas  
New York, New York 10036-4003

SENT VIA FACSIMILE AND U.S. MAIL

Re: ZOVA LA Adverse ZOVO Lingerie Company, LLC  
U.S. Dist. Court Case No.: N/A  
Our file No.: AS07-1101-01  
Respond To Erroneous Claims and  
Demand to cease and Decease Violation  
Of Lanham Act – Unauthorized and Misleading  
Use of ZOVA LA trade mark

Dear Ms. Perry:

This office has been retained to represent Ms. Deanna Hodges and ZOVA LA, with regard to ZOVO Lingerie Company, LLC ("ZLC") erroneous claims. In addition, this office has been retained to represent ZOVA LA in violation of its intellectual property rights by ZOVO Lingerie Company, LLC. Accordingly, direct any and all communications to this office and to the attention of the undersigned.

In or about May of 2001, ZOVA LA was established in County of Orange, state of California as a business enterprise to design and manufacture women clothing. Its unique designs and product lines have placed ZOVA LA in highly recognizable and respectable brand and trademark in the market of women's semi casual, sophisticated, and high-end clothing lines. In public views and according to general

corres\_zla\_responses\_demand\_zlc

E-mail Address: lawfirm@lawfirm4u.com

Response and Demand for Cease and Decease to Maren Perry  
 November 9, 2007  
 Page 2

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consumers' reactions, ZOVA LA product lines are highly sought after and highly regarded women's apparel. ZOVA LA product lines are available for retail sale nationally, through about five (5) well-known national retailers, as well as numerous nationwide wholesalers.

On or about November 6, 2007, we received your correspondence dated October 25, 2007, that was received via UPS. In addition, your correspondence states that a copy of the document was forwarded via email to Ms. Hodges. Please note, that since email is NOT a secured means of communication, neither the undersigned nor any other member of firm, monitors, responds, receives, and/or replies to email involving clients' matters. Please refrain from communicating with this office, via email.

Your correspondence falsely states that ".....you [Ms. Hodges] have just started to use the mark ZOVA as the name of a retail store....and have just launched a website....." Your correspondence further and expressly admits that ZOVO Lingerie Company, LLC began using the ZOVO mark in or a about March of 2005, which is **long after** ZOVA LA began using its trade mark in or about May of 2001.

Normally, trademark rights are acquired by using the mark in commerce to designate a particular product or service. Prior to beginning use of a mark, a thorough trademark search should be conducted to evaluate the availability of the preferred mark. The scope of the search should be commensurate with the expected scope of use of the mark. If the mark is to be used in the United States, the search should be for marks in use anywhere in the United States. If the mark is to be used in a foreign country, the search should be directed to marks registered or in use there. See *Prudential Ins. Co. V. Gibraltar Fin. Corp.* 691 F.2d 1150, 217 USPQ 1097, (9<sup>th</sup> Cir. 1982); see also, 15 U.S.C.A. §§ 1127, 1227.

Zovo Lingerie Company, LLC has admittedly, failed to conduct a proper search to determine the use of ZOVO mark, which is remarkably similar to ZOVA LA. This similarity can create confusion for ZOVA LA dedicated customers. This confusion is directly related to ZOVO's failure to conduct a proper search and discover ZOVA LA, that has been in the interstate commerce since May of 2001.

**Please take notice**, that ZOVA LA hereby demands Zovo Lingerie Company, LLC to cease and deace the use of ZOVO mark to market its produce in the interstate commerce. The use of ZOVO mark is confusing to ZOVA LA dedicated customers and it has prejudicial affects on ZOVA LA's product lines. We must receive Zovo Lingerie Company, LLC verifiable response that ZOVO mark is NO longer used by Zovo Lingerie Company, LLC, and/or Zovo Lingerie Company, LLC has taken proper and lawful steps to stop confusing the general public, including but not limited to

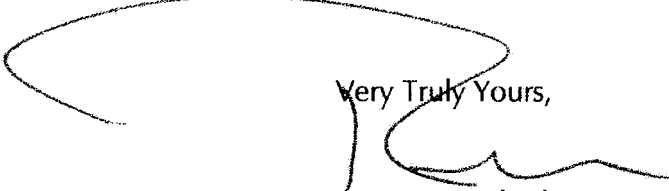
Response and Demand for Cease and Decease to Maren Perry  
November 9, 2007  
Page 3

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ZOVA LA's customers, by **no later than November 30, 2007**. See *Abercrombie & Fitch Co. V. Hunting World, Inc.*, 537 F.2d 4, 9, 189 USPQ 759, (2<sup>nd</sup> Cir. 1976).

***Please take further notice***, that if do not receive Zovo Lingerie Company, LLC's response by November 30, 2007, we assume Zovo Lingerie Company, LLC has no desire to resolve the dispute informally, and we may have to take appropriate steps to protect ZOVA LA's intellectual property rights. 15 U.S.C.A. §§ 1125, et. seq.

Thank you for your attention to this matter, should you have any questions regarding the same, please feel free to contact the undersigned.



Very Truly Yours,

Roger E. Naghash  
Attorney at Law

cc: Ms. Deanna Hodges (Via U.S. Mail only)  
ZOVA LA (Via U.S. Mail only)  
File

# EXHIBIT E

# KING & SPALDING

1185 Avenue of the Americas  
New York, New York 10036-4003  
Phone: 212/556-2100  
Fax: 212/556-2222  
www.kslaw.com

Maren C. Perry  
Direct Dial: (212) 556-2375  
Direct Fax: (212) 556-2222  
mperry@kslaw.com

November 21, 2007

Roger E. Naghash  
4400 MacArthur Boulevard, Suite 900  
Newport Beach, CA 92660-2040

Re: Zovo Lingerie Company, LLC - Objection to Use of ZOVA and ZOVA LA  
Our Ref.: 14866-113001      Your Ref.: AS07-1101-01


Dear Mr. Naghash:

We acknowledge receipt of your November 9, 2007 letter, the original of which arrived in the mail at our offices on November 19, 2007. Please note that we have no record of having received a copy via facsimile.

You state that your client has used its mark since 2001. However, you do not seem to dispute that your client's website was not launched until recently and, in fact, we have not seen any indication of use prior to 2007. So that we may better evaluate this matter, we ask that you please provide us with materials sufficient to demonstrate the nature and extent of your client's use of the Zova mark before 2007. We will then review the materials with our client and respond to your claims on the merits.

We look forward to receiving the requested information. Please let us know if you have any questions.

Very truly yours,

  
Maren C. Perry

# EXHIBIT F



# KING & SPALDING

1185 Avenue of the Americas  
New York, New York 10036-4003  
Phone: 212/556-2100  
Fax: 212/556-2222  
www.kslaw.com

Maren C. Perry  
Direct Dial: (212) 556-2375  
Direct Fax: (212) 556-2222  
mperry@kslaw.com

December 14, 2007

Roger E. Naghash  
4400 MacArthur Boulevard, Suite 900  
Newport Beach, CA 92660-2040

Re: Zovo Lingerie Company, LLC - Objection to Use of ZOVA and ZOVA LA  
Our Ref.: 14866-113001      Your Ref.: AS07-1101-01

Dear Mr. Naghash:

We have not heard from you in response to our letter dated November 21, 2007 (copy attached). Our letter sought support for your claim that your client has used Zova LA since 2001. Our understanding is that, while your client may have incorporated a business under another name in 2001, your client's use of Zova LA is recent, as evidenced by the earliest California corporate filing referencing the name in 2007. We are also not aware of any extensive advertising or promotion of the Zova LA name, either in the past or currently. Please note that Zovo wishes to resolve this matter amicably, if possible, and it is to that end that we seek this information. Once we have a better idea of the timing and scope of your client's use of Zova LA, we can discuss with our client possible means of resolving this matter short of litigation.

We appreciate your cooperation and look forward to hearing from you.

Very truly yours,

  
Maren C. Perry

# EXHIBIT G

## KING & SPALDING

1185 Avenue of the Americas  
New York, New York 10036-4003  
Fax: 212/556-2222  
www.kslaw.com

Kathleen E. McCarthy  
Direct Dial: (212) 556-2345

kmccarthy@kslaw.com

January 30, 2008

**VIA FACSIMILE AND UPS**

949-852-9511

Mr. Roger E. Naghash  
4400 MacArthur Boulevard, Suite 900  
Newport Beach, CA 92660-2040

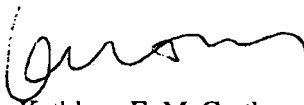
Dear Mr. Naghash:

We have not heard from you in response to our letters dated November 21, 2007 and December 14, 2007.

Since we have not received any materials supporting your client's claim of use dating back to 2001, we assume that our understanding of the limited scope of your client's business as noted in our prior correspondence is correct. In other words, it appears that, while your client may have incorporated a business under another name in 2001, your client only recently began use of Zova LA; has not extensively advertised the Zova LA mark, either in the past or currently; and only recently launched the Zova LA website. In contrast, Zovo obtained a federal registration for its mark and is entitled to nationwide protection for its mark as of the application filing date in 2004. It also seems quite clear from a review of the parties' websites that the Zovo business is more firmly established and extensive than the Zova LA business.

As indicated in our prior correspondence, we are concerned that the Zova and Zovo marks when used for similar goods and services are likely to lead to consumer confusion. Indeed, you agreed with our assessment that the marks are too close in your November 9, 2007 letter. As such, and as requested in our prior letters, we would like to discuss with you means of resolving this dispute short of litigation. For example, Zovo would be willing to enter into an agreement that provides your client with the time required to obtain another domain name, change to another mark and sell off existing inventory that cannot be relabeled. We need your cooperation to discuss the parameters of such an agreement and look forward to hearing from you as quickly as possible as to your client's intentions in this matter.

Best regards,



Kathleen E. McCarthy

KEM/km

# EXHIBIT H

Law Offices Of Roger E. Naghash  
4400 MacArthur Boulevard, Suite 900  
Newport Beach, California 92660-2040  
Telephone: (949) 955-1000  
Facsimile: (949) 852-9511

## FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: (212) 556-2222

To: Kathleen McCarthy  
Of: King & Spalding, LLP  
From: Roger E. Naghash, Esq.  
Client/Matter: Zova LA Adverse Zovo Lingerie Company, LLC.  
Date: February 6, 2008

DOCUMENTS	NUMBER OF PAGES
Nonresponsive Reply and demand for cease and deacease	Three (3)
Affidavit of Hector Predomo	Two (2)
Total Pages Including Cover	Six (6)

### COMMENTS:

Original will follow via U.S. Mail

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\* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (949) 955-1000.

Law Offices Of  
Roger E. Naghash

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Attorney at Law

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(949) 955-1000  
(949) 752-9500  
Fax: (949) 852-9511

February 4, 2008

Kathleen E. McCarthy, Esq.  
King & Spalding, LLP  
1185 Avenue of the Americas  
New York, New York 10036-4003

SENT VIA FACSIMILE AND U.S. MAIL

Re: ZOVA LA Adverse ZOVO Lingerie Company, LLC  
U.S. Dist. Court Case No.: N/A  
Our file No.: AS07-1101-01  
Nonresponsive Correspondence to  
Demand to Cease and Decease Violation  
Of Lanham Act – Unauthorized and Misleading  
Use of ZOVA LA trade mark

Ms. McCarthy:

We are in receipt of your correspondence dated January 30, 2008. It is nonresponsive and provides NO basis and/or authorities for ZOVO Lingerie Company, LLC's ("ZLC") refusal to refrain from further violation of ZOVA LA's Intellectual Property's rights. On November 9, 2007, we prepared and forwarded a demand for ZLC to cease and decess from using trademark that is significantly similar to ZOVA LA's trademark. As of the date of this correspondence, we have yet to receive a responsive reply to ZOVA LA's demand.

As you may know, in general, a trademark is used by its owner in commerce when it is placed in any manner on the goods, or on displays or containers associated with

corres\_zla\_responses\_nonresponsive\_corres

E-mail Address: lawfirm@lawfirm4u.com

Nonresponsive Reply to Kathleen E. McCarthy  
February 4, 2008  
Page 2

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the goods or on tags or labels affixed to the goods and the goods are sold or transported in interstate commerce. See *Payless ShoeSource, Inc. V. Town of Penfield*, 934 F.Supp. 650, (W.D.N.Y. 1996); *Lisa's Party City, Inc. V. Town of Henrietta*, 185 F.3d 12, 51 USPQ2d 1523, (2<sup>nd</sup> Cir. 1999). The use of the mark in such manner provides the basis for which the owner of the mark can maintain dominion and control of the mark. Inherently, this interest is superseded by any other claims that may be advanced in the future.

Under these circumstances ZOVA LA's use of its mark in the trade and commerce, clearly established its protected Intellectual property's rights, in 2001. Similarly, there are many case laws and other rulings that have established the use of a mark on a trade show booth at which the goods are prominently displayed and offered for sale or on a menu to designate a particular sandwich were both deemed as sufficient use of the mark on a display associated with the goods. See *In Re Shipley Co.*, 230 USPQ 891, (TTAB 1986); *In Re Marriott Corp.*, 459 F.2d 525, 173 USPQ 799 (CCPA 1972).

ZOVA LA has been selling its products in the stream of commerce, with its mark prominently displayed on the labels affixed to its product, since June of 2001. Enclosed you will find a copy of Mr. Hector Perdomo's affidavit that sets forth ZOVA LA's customs and practices in manufacturing and marketing of its products in the stream of commerce.

As we have informed Ms. Perry from your office, previously, Zovo Lingerie Company, LLC has admittedly, failed to conduct a proper search to determine the use of ZOVO mark, which is remarkably similar to ZOVA LA. This similarity can create confusion for ZOVA LA's dedicated customers. This confusion is directly related to ZOVO's failure to conduct a proper search and discover ZOVA LA, that has been in the interstate commerce since May of 2001.

**Once again, please take notice**, that ZOVA LA hereby demands Zovo Lingerie Company, LLC to cease and decess the use of ZOVO mark to market its produce in the interstate commerce. The use of ZOVO mark is confusing to ZOVA LA's loyal customers and it has prejudicial affects on ZOVA LA's product lines. We must receive Zovo Lingerie Company, LLC verifiable response that ZOVO mark is NO longer used by Zovo Lingerie Company, LLC, and/or Zovo Lingerie Company, LLC has taken proper and lawful steps to stop confusing the general public, including but not limited to ZOVA LA's customers, by **no later than March 12, 2008**. See *Abercrombie & Fitch Co. V. Hunting World, Inc.*, 537 F.2d 4, 9, 189 USPQ 759, (2<sup>nd</sup> Cir. 1976).

**Please take further notice**, that if we do not receive Zovo Lingerie Company, LLC's response by March 12, 2008, we assume Zovo Lingerie Company, LLC has no desire

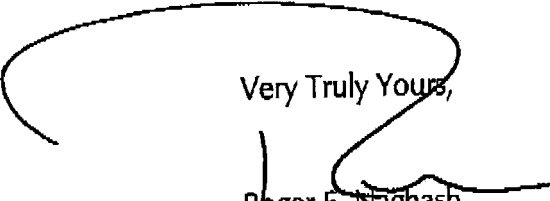
Nonresponsive Reply to Kathleen E. McCarthy  
February 4, 2008  
Page 3

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to resolve the dispute informally, and we may have to take appropriate steps to protect ZOVA LA's intellectual property rights. 15 U.S.C.A. §§ 1125, et. seq.

Thank you for your attention to this matter, should you have any questions regarding the same, please feel free to contact the undersigned.

Very Truly Yours,



Roger E. Naghash  
Attorney at Law

cc: Ms. Deanna Hodges (Via U.S. Mail only)  
ZOVA LA (Via U.S. Mail only)  
File



FEB. 1. 2008 11:16AM Law Offices Of Roger E Naghash

NO. 1970 P. 2

**DECLARATION OF HECTOR PERDOMO**

I, HECTOR PERDOMO, declare:

1. I am president of Mussa, Inc., with its primary place of business in Los Angeles, California. I have personal first hand knowledge of the following facts, and if called and sworn as a witness, I could and would competently testify thereto.

2. This Declaration is being submitted in support of use of "ZOVA LA" trademark in the stream of commerce, since about May of 2001.

3. Mussa, Inc., is an apparel manufacturer and contractor offering a wide range of sewing services to companies that are in the trade of high quality clothing for retail and wholesale, as a proprietorship entity, since 1999, that was incorporated in the State of California in June of 2005.

4. Mussa, Inc., manufactures and produces high quality garment for designers, promoters, and marketing companies, based on their own unique and distinguishable designs, trademarks, and identifiable appearances.

5. Mussa, Inc. and I have been manufacturing and sewing various garments for Ms. Deanna Hodges and "ZOVA LA," since about June of 2001.

6. Mussa, Inc. and I have been manufacturing and sewing various garments for Ms. Deanna Hodges and "ZOVA LA" under several different labels and trademarks that we general affix to each article of garment that we sew for Ms. Hodges and "ZOVA LA."

7. The garments that we have been sewing for Ms. Hodges and "ZOVA LA" have been and are manufactured in bulk for wholesale and/or retail sale, based on various sizes, colors, and other measurements based on marketing requirements that Ms. Hodges provided.

ZOVA LA - Declaration of Hector Perdomo - 1

FEB. 6. 2008 4:22PM Law Offices Of Roger E Naghash

NO. 1990 P. 6

FROM : MUSSA

FAX NO. : 213.332.7012

FEB. 06 2008 11:40AM P2

FEB. 1. 2008 11:17AM Law Offices Of Roger E Naghash

NO. 1970 P. 3

3. From about June of 2001, until the date of this declaration, Mussa, Inc. and I have been sewing garments for Ms. Hodges, with the label of "ZOVA LA" affixed to each article of garment that we sewed, manufactured and/or produced.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 4 day of February 2008, at LOS ANGELES California.

Dated: February 4, 2008

  
\_\_\_\_\_  
Hector Perdomo