

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X  
 CYNTHIA STEFFE, )  
                   Opposer, )  
                   v. )  
                   ) )  
                   ) )  
 BERNARD CHAUS, INC. )  
                   ) )  
                   Applicant. )  
 -----X

Opposition Nos. 91175375  
 91175618  
 91175633  
 91175747

# 78746180

AFFIDAVIT OF CYNTHIA STEFFE  
 IN OPPOSITION TO  
 APPLICANT’S MOTION FOR  
SUMMARY JUDGMENT

STATE OF NEW YORK            )  
   ) ss.:  
 COUNTY OF NEW YORK        )

CYNTHIA STEFFE, having been duly sworn, deposes and states under penalty of perjury:

1. I am the Opposer in the above-captioned case. I make this Affidavit in Opposition to Applicant’s Motion for Summary Judgment based upon my personal knowledge, including my familiarity with the Exhibits annexed hereto.
2. I am a fashion designer, having been in the fashion industry since 1981. I made a name for myself in the fashion industry more than 20 years before I worked for Chaus, and my name remains prominent within the world of fashion.
3. I graduated from the internationally renowned Parsons School of Design (“Parsons”) in 1981. That year, I was awarded Parsons’ “Student Designer of the Year,” and won the Donna Karan<sup>1</sup> “Gold Thimble” award. I was hired by Donna Karan while still in school and worked for her as one of only two or three designers working on her collection for two years following my graduation from Parsons.

## EXCHANGE AGREEMENT

This EXCHANGE AGREEMENT, dated as of January 2, 2004 (this "Agreement"), is entered into by and among CYNTHIA STEFFE ACQUISITION, LLC (the "Buyer"), a New York limited liability company and a wholly-owned subsidiary of Bernard Chaus, Inc. ("Chaus"), Cynthia Steffe ("Steffe") and Richard Roberts ("Roberts") (Buyer, Steffe and Roberts are each hereinafter individually referred to as a "Party" and collectively as the "Parties").

### WITNESSETH:

WHEREAS, simultaneously with the execution of this Agreement, the Buyer is entering into an asset purchase agreement (the "Asset Purchase Agreement," capitalized terms used and not defined herein shall have the meaning set forth in the Asset Purchase Agreement) with L.F. Brands Marketing (the "Company") pursuant to which the Buyer is purchasing certain assets of the Company used in the business of designing, arranging for the manufacture of, marketing and selling of a women's clothing apparel line, under the Cynthia Steffe Marks (the "Business");

WHEREAS, Steffe and the Company are parties to that certain licensing agreement, dated as of May 9, 2000, pursuant to which Steffe has licensed the use of the Cynthia Steffe Marks to the Company (the "Steffe Licensing Agreement"), and such agreement is to be terminated simultaneously with the consummation of the Buyer's purchase of assets pursuant to the Asset Purchase Agreement (the "Asset Purchase");

WHEREAS, Steffe has issued a promissory note in favor of the Company in the original principal amount of \$1,000,000 (the "Steffe Note"), and the Company is transferring all of its right, title and interest in and to such promissory note to the Buyer pursuant to the Asset Purchase Agreement;

WHEREAS, simultaneously with the consummation of the Asset Purchase, Steffe and Chaus are entering into an employment agreement pursuant to which Steffe shall serve as the Chairperson and Chief Designer of the Cynthia Steffe Division of Chaus (the "Employment Agreement"); and

WHEREAS, immediately following the Asset Purchase, the Parties desire to effect an exchange pursuant to which Steffe will exchange all of her right, title and interest in and to the Intellectual Property set forth on Exhibit A, and all other Intellectual Property used in the Business in which she has any interest (collectively, the "Steffe Intellectual Property"), in return for the forgiveness of all amounts owing under the Steffe Note.

NOW, THEREFORE, in consideration of the premises and the mutual agreements set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as

## ARTICLE I EXCHANGE

### Section 1.1. Transfer of Steffe Intellectual Property; Cancellation of Steffe Note.

Upon the terms and subject to the conditions of this Agreement, at the Closing: (a) Steffe is selling, transferring, conveying, assigning and delivering free and clear of Encumbrances to Buyer, and Buyer is purchasing, acquiring and accepting from Seller, all of the Seller's right, title and interest in and to the Steffe Intellectual Property; and (b) the Buyer is canceling all obligations due and owing under the Steffe Note.

### Section 1.2. Closing; Closing Date.

The closing of the exchange provided for in this Agreement (herein called the "Closing") is being held at the offices of Swidler Berlin Shereff Friedman, LLP, 405 Lexington Avenue, 12<sup>th</sup> Floor, New York, New York 10174 on the date hereof (such date and time being referred to herein as the "Closing Date"), immediately following the consummation of the Asset Purchase.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES OF STEFFE AND ROBERTS

Steffe and Roberts hereby represent and warrant to and for the benefit of the Buyer, as of the date hereof, as follows:

Section 2.1. Authority; Binding Obligation. Steffe and Roberts each have the requisite authority and power to enter into, execute and deliver this Agreement and to perform her obligations hereunder. This Agreement has been duly executed and delivered by Steffe and Roberts and constitute a valid and binding obligation of each of them enforceable in accordance with its terms.

Section 2.2. No Conflict; Required Consents. The execution, delivery and performance by Steffe and Roberts of this Agreement, the fulfillment of and compliance with the terms and provisions hereof and the consummation by each of them of the transactions contemplated hereby, do not and will not (with or without notice or lapse of time, or both) conflict with or result in any violation by either of them under any provisions of or result in acceleration, termination, cancellation or modification of, or constitute a default under: (i) any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease, agreement, or other instrument, obligation or agreement of any kind relating to which either of them is a party, or by which any of their assets may be bound or affected; or (ii) any Requirements of Law. Such execution, delivery or performance do not and will not result in the creation or imposition of any Encumbrance of any nature whatsoever upon the Steffe Intellectual Property or require any filing with, or permit, authorization, consent or approval of, a Governmental Entity or other Person.

Section 2.3. Steffe Intellectual Property. Steffe has good, valid and marketable title to all of the Steffe Intellectual Property. Neither Steffe nor Roberts has caused any lien, charge or other encumbrance to be made on or against the Steffe Intellectual Property. To the knowledge

encumbrances in favor of CIT. The Steffe License Agreement has been terminated as of the date hereof, and no further obligations are due and owing thereunder. To the knowledge of Steffe and Roberts, Steffe's rights in all of the Steffe Intellectual Property are valid and there are no restrictions on the direct or indirect transfer of any Contract, or any interest therein, held by Steffe in respect of the Steffe Intellectual Property. To the knowledge of Steffe and Roberts, there are no claims or demands of any other Person pertaining to any of the Steffe Intellectual Property and no proceedings have been instituted, or are pending or threatened, which challenge her rights in respect thereof. Steffe has not acted in any way such that her acts would invalidate, eliminate, or otherwise render unenforceable any of the Steffe Intellectual Property. None of the Steffe Intellectual Property has been, or will be, charged with Encumbrances by Steffe. In relation to registered rights, all domestic and foreign registrations forming part of the Steffe Intellectual Property have, to Steffe's knowledge, been maintained and all renewal fees have been paid on time. Steffe has not received an adverse opinion (whether from the registry concerned or its advisor) or notice of opposition in relation to any such application. Steffe has no knowledge of any infringement by others of any of the Steffe Intellectual Property rights.

Section 2.4. Broker Fees. No broker or finder is entitled to any brokerage fees, commission or finders' fee in connection with the transactions contemplated by this Agreement or any other agreement contemplated hereby pursuant to any arrangement with Steffe.

### ARTICLE III REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to and for the benefit of the Seller, as of the date hereof, as follows:

Section 3.1. Organization of the Buyer. Buyer is duly organized, validly existing and in good standing under the laws of the State of New York.

Section 3.2. Authority: Binding Obligation. Buyer has the requisite authority and power to enter into, execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance by the Buyer of this Agreement have been duly authorized by all necessary action of the Buyer. This Agreement has been duly executed and delivered by the Buyer and constitutes a valid and binding obligation of the Buyer, enforceable in accordance with their terms.

Section 3.3. No Conflict: Required Consents. The execution, delivery and performance by Buyer of this Agreement, the fulfillment of and compliance with the terms and provisions hereof and the consummation by the Buyer of the transactions contemplated hereby, do not and will not (with or without notice or lapse of time, or both) conflict with or result in any violation by the Buyer, under any provisions of or result in acceleration, termination, cancellation or modification of, or constitute a default under: (i) the certificate of formation, operating agreement or similar governing documents of the Buyer; (ii) any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease, agreement, or other instrument, obligation or agreement of any kind to which the Buyer is a party or by which

authorization, consent or approval of, a Governmental Entity or other Person, other than those that have been obtained as of the date hereof.

Section 3.4. Broker Fees. No broker or finder is entitled to any brokerage fees, commission or finders' fee in connection with the transactions contemplated by this Agreement or any other agreement contemplated hereby pursuant to any arrangement with the Buyer.

#### ARTICLE IV. RIGHTS AND OBLIGATIONS SUBSEQUENT TO CLOSING

Section 4.1. Further Assurances. Each Party shall, from time to time on being reasonably required to do so by the other Party, now or at any time in the future, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form reasonably satisfactory to the other Party as the other Party may reasonably consider necessary for giving full effect to this Agreement and securing to the other Party the full benefit of the rights, powers and remedies conferred upon the other Party in this Agreement.

Section 4.2. Licensing Revenue. During the period (the "Licensing Revenue Share Period") commencing on the date hereof and ending upon the termination of Steffe's employment with Chaus (or, if Steffe's employment with Chaus is terminated by Chaus without Cause (as defined in the Employment Agreement), during the period commencing on the date hereof and ending on the three year anniversary of such termination or non-renewal), Steffe shall be entitled to receive payments (the "Licensing Revenue Share Payments") based upon the revenue, if any, generated by the Buyer from the license of the Steffe Intellectual Property to Persons that are not Affiliates of Chaus, net of any costs and expenses associated with such licensing ("Licensing Revenue"). Such Licensing Revenue Share Payments shall be equal to twenty-five percent (25%) of Licensing Revenue, with all Licensing Revenue Share Payments for a calendar year due within one hundred and twenty (120) days of the end of such calendar year. If, at any time during the Licensing Revenue Share Period, Steffe or Roberts shall, directly or indirectly, whether as principal (including self-employed), manager, agent, employee, consultant, investor, advisor or representative, they will not participate, or solicit any Person to participate in, any business that competes with any licensor of the Steffe Intellectual Property (or any Person that was engaged in discussions with the Company regarding a license of the Steffe Intellectual Property as of the termination of Steffe's employment with Chaus), the Company shall have no further obligation to make Licensing Revenue Share Payments.

Section 4.3. Post-Termination Royalties. In the event that Steffe's employment with Chaus is terminated by Chaus without Cause, Steffe shall be entitled to receive payments ("Royalty Payments") based upon Chaus' net sales of apparel (net of all returns, allowances, customer offsets and deductions), incorporating the Steffe Intellectual Property, but excluding any Licensing Revenue ("Net Sales"), during the three year period commencing upon the termination of her employment with Chaus. Such Royalty Payments shall be equal to one percent (1%) of Net Sales, and shall be due and payable at the same time as the Licensing

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