

# Hedge Fund Alert

THE WEEKLY UPDATE ON FUND MANAGEMENT INTELLIGENCE

## Woman-Run Firm, Elle in Trademark Fray

The owner of a small quantitative hedge fund called **Elle Capital** that's staffed by women is fighting the French owner of **Elle** fashion magazine's trademarks as she seeks to register a U.S. trademark in her firm's name.

Elle Capital, apparently a play on the name of the firm's founder, **Elle Kaplan**, launched its behavioral algorithm fund in January 2021. The San Francisco operation manages only \$5 million and has not yet marketed the vehicle, which invests in a range of assets. But it has a strong endorsement: **Howard Morgan**, a co-founder of **First Round Capital** who was an early executive at quantitative hedge fund manager **Renaissance Technologies**. He's a member of Elle Capital's board.

An entity controlled by Elle Kaplan filed a trademark registration application for the use of Elle Capital with the **U.S. Patent and Trademark Office** in December 2019. But Paris enterprise **Hachette Filipacchi Press** is opposing the registration and is pursuing a costly litigation with the fledgling hedge fund firm, which appears headed for a hearing before a USPTO hearing panel next year.

Hachette is a publishing division of **Lagardere**, which in 2011 sold to **Hearst** 100 magazines, including Elle magazine issues published outside of France. **The New York Times** reported at the time that Lagardere retained the Elle trademark and would collect royalties from Hearst.

In a filing in its trademark opposition case, Hachette says that the name Elle Capital would cause confusion in the minds of consumers, as the two companies' products would be sold to the same general class of purchasers and have overlapping marketing channels. Hachette also said Elle Kaplan's hedge fund would blur Elle magazine's distinctive quality.

Hachette doesn't claim that it has investment operations, or that someone might select one at a newsstand. Only that it is a renowned magazine publisher and lifestyle company that provides services in sectors including media, beauty, fashion and style. Hachette does claim that it "has used" Elle trademarks in connection with credit cards and credit card services, but it doesn't say if that occurred in the U.S.

In 2008, The USPTO cancelled that trademark use, which was first registered in 2001. Hachette hadn't proved

it was using the trademark in that context in the U.S., as the law requires. That registration had covered banking services, credit and debit card services, health insurance underwriting and financial planning.

In its March 23 answer to Hachette's claims, Elle Capital said that widespread use of the term Elle has already diluted Hachette's trademarks, which it's failed to properly maintain under U.S. law.

"It seems like what Elle magazine is trying to say is that they are so famous and so well known that they should pretty much be able to stop anyone from doing anything," said **Beth Alter**, an intellectual property lawyer with **Seward & Kissel**, whose firm is not working on the case. Are the purchasers "so sophisticated that they would not likely be confused? ... If you buy off the rack, that's an impulse purchase. But an investment in a hedge fund is not something you quickly do. It seems an uphill battle for Elle magazine."

Furthermore, Alter noted other entities that have current U.S. trademark registrations that use Elle in their names. That includes a skin care product line called Elle Vie, whose trademark application Hachette originally objected to, but was permitted in 2021. Others are a Denver hair salon operator called elle.b Savvy and a lingerie line called Elle Reve, neither of which Hachette opposed. It's unknown whether Hachette separately struck deals with any of those brands.

The Elle Capital litigation before the USPTO hearing board may not end there. Either party may appeal an unfavorable ruling, either to a U.S. district court or to a federal court designated to hear trademark appeals.

Elle Capital and Hachette are in a discovery phase, which is scheduled to end Aug. 24. Following exchanges of briefs and other requirements, a request for an oral hearing must be made before June 30, 2023.

Elle Capital is one of a very small number of quantitative hedge fund operations run by a woman, in an industry where there are few women managing hedge funds of any kind.

In addition to Elle Capital, Kaplan also owns wealth management firm **LexION Capital**, which she founded in 2010. The operation had \$79 million of gross assets as of yearend, according to its latest **SEC** registration. ■