

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARDVIVAT HOLDINGS LIMITED,
Opposer

v.

TRELISE COOPER LIMITED
Applicant

Opposition No.: 91160188

*Serial No. 72423167*BOX TTAB
Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

MOTION TO SET ASIDE DEFAULT

This is in response to the notice of default issued on August 2, 2005.

Applicant submits that default should not be entered for the following reasons and moves that the Board reopen proceedings:

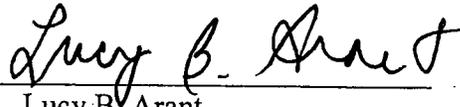
- (a) On June 23, 2005, Applicant had submitted a consented Motion to Extend Its Time to Answer.
- (b) Applicant and Opposer had requested this additional extension of time in order to finalize its Co-Existence Agreement, a copy of which is enclosed herewith and marked as Exhibit A.
- © Prior to the Board's denial of the consented Motion to Extend Its Time to Answer, Opposer and Applicant finalized its Co-Existence Agreement.



08-18-2005

CERTIFICATE OF SERVICE

It is hereby certified that a copy of this MOTION TO SET ASIDE DEFAULT was served by first-class mail, postage prepaid, to Frederick H. Rabin, Esq., Fish & Richardson P.C., 225 Franklin Street, Boston, MA 02110, Attorney for Opposer, this Fifteenth day of August, 2005.



Lucy B. Arant
Attorney for Applicant
Mitchell Silberberg & Knupp LLP
11377 W. Olympic Boulevard, Suite 603
Los Angeles, California 90064

CO-EXISTENCE AGREEMENT

BETWEEN

Vivat Holdings Limited, of Lee Cooper House, 17 Bath Road, Slough Berkshire, SL1 3UL, United Kingdom ("VHL")

AND

Trelise Cooper Limited, of 8 Earle Street, Parnell, Auckland, New Zealand ("TCL")

WHEREAS

- A. VHL is the owner of the LEE COOPER trade marks throughout the world including those Australian and New Zealand registrations listed in the attached Schedule A.
- B. VHL has also used and promoted its LEE COOPER trade marks extensively throughout the world since as early as 1958 and as a result of this use has developed a substantial reputation throughout the world in the LEE COOPER name in relation to clothing.
- C. TCL is the registered owner of the trade mark TRELISE COOPER & device in New Zealand, Australia and Hong Kong and is the applicant for registration in the United States of America. Details of these marks are listed in the attached Schedule B.
- D. VHL has opposed registration of TCL's United States application no. 76/423167 TRELISE COOPER & device in Classes 25 and 42.
- E. TCL has used the TRELISE COOPER & device trade mark in other countries around the world and has been using the COOPER BY TRELISE trade mark as depicted on the attached Schedule C since at least November 2003.
- F. TCL recently released a clothing range under the trade mark COOPER and VHL is concerned that this use may give rise to deception or confusion and may misrepresent a trade mark connection between TCL and VHL. VHL is also concerned its trade mark registration rights may be infringed.
- G. To avoid a multi-jurisdictional dispute over the COOPER name, the parties have agreed to co-exist throughout the world in accordance with the terms and conditions set out in this Agreement

NOW IT IS HEREBY AGREED AS FOLLOWS:

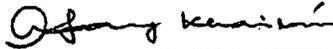
- 1. TCL undertakes not to use or seek to register the trade mark COOPER by itself in relation to clothing, other than with an additional differentiating feature, being COOPER BY TRELISE in such a manner as per the representation in Schedule C, or as the words in plain block letters: COOPER BY TRELISE, so that the word COOPER is never used with greater prominence or in a different style, font or colour than the words BY TRELISE
- 2. TCL undertakes not to object to VHL using or registering the trade mark LEE COOPER in any country.

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TCL

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- 3. VHL agrees to withdraw its opposition to United States trade mark application no 76/423167 before the 28 January 2005 deadline.
- 4. VHL agrees not to challenge TCL's use or registration of the TRELISE COOPER trade mark or the COOPER BY TRELISE trade mark throughout the world.
- 5. Each party bears its own costs.
- 6. This Agreement is governed by the laws of England and the parties submit to the non-exclusive jurisdiction of the courts of that country.

Executed by the authority of, for and
on behalf of Vivat Holdings Limited by



Signature of authorized officer

Ajay KHATTAN

Name of authorized officer (BLOCK LETTERS)

Director

Position of authorized officer within
Vivat Holdings Limited



Signature of Witness

Name of Witness (BLOCK LETTERS)

Address of Witness

14 Grosvenor Street
London

Executed by the authority of, for and
on behalf of Trelise Cooper Limited by



Signature of authorized officer

TRELISE PAMELA COOPER

Name of authorized officer (BLOCK LETTERS)

MANAGING DIRECTOR

Position of authorized officer within
Trelise Cooper Limited

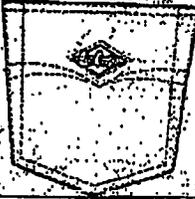

Signature of Witness

A.E. DEW

Name of Witness (BLOCK LETTERS)

18a PARRY RD, MT WELLINGTON
Address of Witness AUCKLAND NEW ZEALAND

Schedule A

Australia	LEE COOPER	243489	25	Registered until 28/10/2005
	LEE COOPER	297983	25	Registered until 23/06/2007
	LEE COOPER	330891	25	Registered until 23/06/2007
		370163	25	Expired - renewal possible
		437428	25	Registered until 03/12/2005
		632302	25	Registered until 15/06/2004
	LEE COOPER	722256	9	Registered until 19/11/2006
New Zealand		64974	25	Registered until 04/11/2008
		140005	25	Expired
	LEE COOPER	150089	25	Registered until 01/12/2004
	LEE COOPER	237645	14	Registered until 08/06/2015
		240714	25	Registered until 31/03/2015

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Schedule B

Country	Applicant	Registration Number	Class	Registration Status
New Zealand	TRELISE COOPER	608225	25	Registered until 14/02/2007
Australia	TRELISE COOPER	833927	25	Registered until 03/05/2010
Hong Kong	TRELISE COOPER	200214539	25	Registered until 17/06/2009
	TRELISE COOPER	200214540	42	Registered until 17/06/2009
United States	TRELISE COOPER	76/423167	25 and 42	Under opposition filed 19/06/2002

Schedule C

C O O P E R by Trelise

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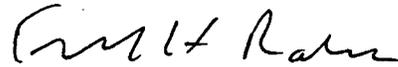
Opposition No. 91160188

WITHDRAWAL OF NOTICE OF OPPOSITION

Pursuant to 37 C.F.R. § 2.106 (c), hereby withdraws this opposition with prejudice to its refiling.

Respectfully submitted,

Date: 12 August 2005



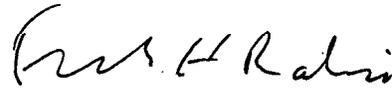
Frederick H. Rabin Reg. No. 24,488

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

CERTIFICATE OF SERVICE

I hereby certify that, on 12 August 2005, a true and correct copy of the foregoing
WITHDRAWAL OF NOTICE OF OPPOSITION was served by first class mail, postage
prepaid, to:

Lucy B. Arant, Attorney for Applicant
Mitchell Silberberg & Knupp LLP
11377 W. Olympic Boulevard - Suite 603
Los Angeles, California 90064

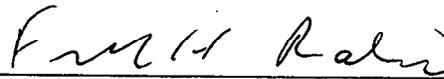


Frederick H. Rabin

CERTIFICATE OF MAILING

I hereby certify that, on 12 August 2005, this document is being mailed by first
class mail, postage prepaid to

TTAB/NO FEE
Asst. Commissioner for Trademarks
P.O. Box 1451
Arlington, VA 22313-1451



Frederick H. Rabin