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VIA EXPRESS MAIL

United States Patent & Trademark Office
Trademark Trial and Appeal Board
James Madison Building
600 Dulany Street
Alexandria, VA 22314

**Re: Opposer's Reply Brief
Mark: ULTIMATE POLO
Serial No. 78/170,846
Opposition No. 91163556
Interlocutory Attorney: Thomas Wellington**

Dear Sir or Madam:

Enclosed please find the following in connection with the captioned opposition:

- 1) Redacted version of Opposer's Reply Brief, inside an enveloped marked "REDACTED;"
- 2) Confidential materials from Opposer's Reply Brief sealed inside an envelope marked "CONFIDENTIAL," consisting of pages 3, 7, 10 and 11 of the Brief.

Kindly acknowledge receipt of this filing by time stamping the enclosed copy of this letter and returning it in the self-addressed envelope provided. If you have any questions, please do not hesitate to call Vanessa Ignacio at 973-422-6426.

Very truly yours,

Marian E. Gorman

Marian E. Gorman
Legal Assistant to
Vanessa A. Ignacio, Esq.

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Enclosure(s)



02-20-2007

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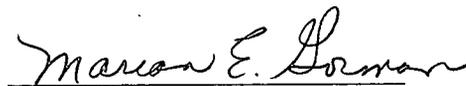
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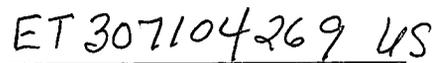
OPPOSER'S MAIN BRIEF ON THE CASE

Mark: ULTIMATE POLO
Serial No. 78/170,846
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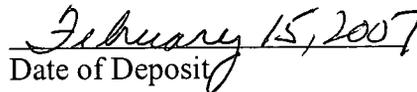
I, Marian E. Gorman, do hereby certify that the above-referenced correspondence, which is attached, is being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" service under 37 CFR 1.10, postage prepaid, in an envelope addressed to United States Patent & Trademark Office, Trademark Trial and Appeal Board, James Madison Building, 600 Dulany Street, Alexandria, VA 22314, on this 15th day of February, 2006.



Marian E. Gorman



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

Opposition of Application Serial No. 78/170,846

Target Brands, Inc.,

Opposer,

v.

Shaun N.G. Hughes,

Applicant.

Opposition No. 91163556

TARGET BRANDS, INC.'S REPLY BRIEF

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PRELIMINARY STATEMENT

To distract attention from the paucity of the evidence in the record demonstrating that ULTIMATE POLO has acquired distinctiveness, Applicant, in his main brief, employs a smoke-screen argument in a futile attempt to cast a cloud over Target's standing to bring this opposition. However, contrary to Applicant's gloss on the Board's standing requirement, any merchant who could describe goods now or in the future by a proposed mark has standing to file opposition. Target, indeed, currently sells goods very similar to that of Applicant that actually are described using Applicant's proposed mark and Target has a compelling interest in continuing to do so. Thus, notwithstanding Applicant's hair splitting over the differences between the market for his "Ultimate" polo shirts and all other "Ultimate" polo shirts, long-standing Board precedents hold that damages sufficient to establish Target's standing are *presumed*. While Target has clearly satisfied the Board's liberal standing requirements, Applicant has utterly failed to satisfy his burden of demonstrating that in the minds of the public the primary significance of his proposed ULTIMATE POLO mark is the source of the product rather than the product itself. Indeed, some of the evidence -- which focuses on Applicant's SUN PRECAUTIONS® and SOLUMBRA® trademarks -- demonstrates that the relevant public does *not* recognize the proposed mark as a source designation. Indeed, Applicant lacks *any* direct evidence that consumers view "Ultimate Polo" as a source identifier.

Resigned to principally rely upon the extent of his sales and promotion of the proposed mark, yet all but acknowledging that these figures appear to be unsubstantial on their face, Applicant advances the unsupported theory that the mark has become distinctive among so-called "sun sensitive" consumers. However, despite his contention, Applicant fails to quantify the size of this alleged market and fails to submit any evidence of his market share in this purported niche. In the absence of such context, the Board has no basis upon which it can even entertain Applicant's argument. Moreover, since there are at least a couple of other sun protective shirt sellers that refer to their polos as the "Ultimate," Applicant has failed to

demonstrate exclusive use of the proposed mark even among the purveyors of sun protective shirts. Furthermore, the evidence demonstrates that Applicant has only marketed his "Ultimate Polo" shirts in conjunction with, and as a small component of, his entire SUN PRECAUTIONS® apparel collection. Applicant has submitted no evidence establishing that he has ever promoted his "Ultimate Polo" shirts separate and apart from the rest of Applicant's product line. For these reasons, and for the reasons that follow, registration of the proposed mark should be denied.

ARGUMENT

A. Target's Standing to Bring this Opposition is Indisputable.

In a feeble effort to short-circuit Target's meritorious opposition to Shaun Hughes's application to register ULTIMATE POLO on Section 2(f) grounds, Applicant has attempted to transmogrify the issue of standing into a wholly irrelevant debate over whether Applicant's polo shirts directly compete with Target's polo shirts and whether there is imminent or actual confusion in the marketplace (Applicant's Br. 7) -- issues that are not before the Board. The purpose of the Board's liberal standing requirement is to verify that the plaintiff has a "real interest" in the outcome of the matter, i.e., "to prevent litigation where there is no real controversy between the parties, where a plaintiff, petitioner or opposer, *is no more than an intermeddler.*" Lipton Industries, Inc. v. Ralston Purina Co., 670 F.2d 1024, 1028-29, 213 U.S.P.Q. 185, 189 (C.C.P.A. 1982) (emphasis added). Indeed, in Lipton Industries the Court of Customs and Patent Appeals found error in previous Board decisions in which it had required "proof of a legal conclusion, likelihood of confusion, rather than directing its inquiry to whether a petitioner established facts which showed that it had a legitimate personal interest." 213 U.S.P.Q. at 189.

It is well-established that "one who makes and sells a product that could be described by the term applicant seeks to register has standing to oppose." J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 20:11 (4th ed. updated Dec. 2006). In such cases, standing is based on the presumption of damage to the opposer should he be denied the

right to use the term descriptively. See De Walt, Inc. v. Magna Power Tool Corp., 289 F.2d 656, 129 U.S.P.Q. 275, 280 (C.C.P.A. 1961) (damage to an Opposer “will be presumed or inferred when the mark sought to be registered is descriptive of the goods and the opposer or petitioner is one who has a sufficient interest in using the descriptive term in its business”). Applicant has stipulated that Target sells shirts bearing the term “Ultimate Polo” (Stipulation ¶ 64) and has acknowledged that Target’s use is descriptive (Applicant’s Br. 7). Having sold more than [REDACTED] “Ultimate Polo” shirts in less than a year, and having invested more than [REDACTED] dollars promoting the line to consumers, Target clearly has a compelling interest in continuing to use the term “Ultimate Polo” to describe its line of polo shirts. See Highly Confidential Stipulation ¶¶ 9, 10, 11, 13.

While the main thrust of Applicant’s argument seems to be that that Target lacks standing because its polo shirts and Target’s polo shirts are purportedly distinguishable goods sold to different customers, this line of reasoning is undermined entirely by cases recognizing that standing is established by merely demonstrating that the term sought to be registered is used descriptively on *related goods* and/or that the product *could be produced in the normal expansion of plaintiff’s business*. See Federal Glass Co. v. Corning Glass Works, 162 U.S.P.Q. 279, 282 (T.T.A.B. 1969) (it is sufficient that the party objecting to such registration be engaged in the manufacture and/or sale of the same *or related goods*) (emphasis added); see also Binney & Smith Inc. v. Magic Marker Industries, Inc., 222 U.S.P.Q. 1003, 1010 (T.T.A.B. 1984). In Binney, the Board held that:

In order to establish its standing to object to the registration of an allegedly merely descriptive or deceptively misdescriptive term, a plaintiff need only show that it is engaged in the manufacture or sale of the *same or related goods* as those listed in the defendant’s . . . application or registration and that the product in question is one which *could be produced in the normal expansion of plaintiff’s business*; that is, that plaintiff has a real interest in the proceeding because it is one who has a present or prospective right to use the term descriptively in its business.

222 U.S.P.Q. at 1010 (citing Federal Glass) (emphasis added).

Notwithstanding the evidence before the Board in this case demonstrating that there is substantial overlap in markets for apparel and “sun protective” apparel (see, infra, §§ B(1) & (2)), the Board has never required that an opposer’s goods be the same as the applicant’s goods to demonstrate standing. Indeed, the same argument raised by Applicant here was soundly rejected by the Board in Federal Glass. In those proceedings, the applicant sought to register a floral design mark for coffee percolators formed of crystalline material produced from glass. 162 U.S.P.Q. at 280. The opposer did not make coffee makers or percolators, or any products made out of glass-ceramic material such as those produced by the applicant. Id. at 281. Rather, the opposer used a similar floral design on its glassware, which included tumblers, tableware, dinnerware and cookware. Id. Just as in this case, the applicant “urged that since opposer does not sell coffee makers of any kind, it has, in effect, no standing to challenge applicant’s right of registration involved herein.” Id.

The Board rejected the applicant’s argument, finding that it was not necessary that the opposer sell or manufacture the same goods, or even goods that use the particular descriptive word or design in question. Id. Rather, the Board held that all an opposer must demonstrate is that it is “engaged in the manufacture and/or sale of the same or related goods and that the product in question be one that could be produced in the normal expansion of that person’s business.” Id. If that threshold showing is made, the damage associated with the applicant’s registration of a descriptive mark is *presumed* “since a registration thereof with the statutory presumptions afforded the registration would be inconsistent with the right of another person to use these designations or designs in connections with the same or similar goods as it would have the right to do when and if it so chooses.” Id.

If, under the analysis in Federal Glass, cookware and coffee makers are “related goods,” then the polo shirts and “sun-protective” polo shirts at issue in this case are clearly sufficiently similar to raise the presumption of damage to Target. But even without this presumption, the evidence is more than sufficient to support Target’s reasonable belief that it will be damaged if Applicant is permitted to register ULTIMATE POLO:

- Both Shaun Hughes and Target promote their “Ultimate Polo” shirts on the internet and in retail outlets (Stipulation ¶¶ 53, 54, 64); registration of Shaun Hughes’s proposed mark will damage Target in that consumers may perceive Applicant as (i) being the source of all “Ultimate Polo” shirts, and (ii) having the exclusive right to use the term “Ultimate Polo.” Applicant’s argument that the shirts are “different goods” (Applicant’s Br. 2) improperly presumes that every customer who searches the internet for apparel (sun protective or otherwise) is sophisticated enough recognize the distinctions that Applicant claims set his polo shirts apart from so-called “conventional” polo shirts.¹ Target may also be damaged if unsophisticated customers were to learn about Applicant’s trademarked polo shirts and come to believe that Target’s polo shirts will offer the same degree of sun protection.

- Notwithstanding applicant’s claim that his registration of ULTIMATE POLO for “sun protective shirts” would not interfere with Target’s “fair use” of the term on “conventional garments,” (Applicant’s Br. 1) the fact of the matter is that all holders of exclusive trademark rights have the right to block the use of their trademarks by others on related goods, particularly the closely-related polo shirts at issue here.

- The fact that Target does not currently plan to market sun protective shirts or features does not mean it will not do so in the future. All that need be shown is that “the product in question be one that could be produced in the normal expansion of that person’s business.” Binney & Smith Inc., 222 U.S.P.Q. at 1010. Sun protective shirts are clearly within the normal expansion of Target’s existing clothing business.

For all of the aforementioned reasons, Target has more than met the Board’s liberal standing requirements for bringing this opposition.

¹ Evidencing Target and Applicant’s co-habitation on the Internet, a Google search on the term “Ultimate Polo,” results in the identification of both the target.com and sunprecautions.com websites. See T311-T313. Notably, Google, which attempts to list sites in order of popularity, displays Target’s website first and Applicant’s website thirty-second. See id.

B. Applicant's Evidence of Secondary Meaning is Inadequate to Establish a Right to Register His Proposed Trademark.

Applicant relies upon only four pieces of indirect evidence to demonstrate that his proposed mark has acquired distinctiveness: (1) sales of Applicant's "Ultimate Polo" shirt between 1993-2005; (2) Applicant's continuous but non-exclusive use of the mark during the same period; (3) quantitative evidence of promotion of his entire line of clothing between 1996-2005; and (4) two mentions of the "Ultimate Polo" shirt on third-party web sites. The record is completely devoid of any direct evidence demonstrating consumer recognition of ULTIMATE POLO, such as surveys, consumer testimony, or letters from purchasers.

In fact, some of Applicant's direct evidence actually demonstrates that the relevant public does *not* recognize the proposed mark as a source designation. Recent catalogs contain two testimonials from customers shown wearing Applicant's "Ultimate Polo" shirts, Greg Fisher (APP 209) and Peter O'Brien (APP 554), both of whom fail to mention the shirts at all and instead discuss the SOLUMBRA® fabric from which the shirts are made. Mr. Fisher praises SOLUMBRA® as being better than "greasy sunscreens that I always forgot to reapply" (APP 209), while Mr. O'Brien says "I need more than just sunscreen. Solumbra gives me all-day sun protection." (APP 554).

The ultimate test in determining acquisition of distinctiveness under Section 2(f) is not the Applicant's efforts, but the Applicant's success in educating the public to associate the claimed mark with a single source. In re Packaging Specialists, Inc., 221 U.S.P.Q. 917 (T.T.A.B. 1984). Applicant has not shown by the requisite preponderance of the evidence that, in the minds of the public, the primary significance of the highly descriptive mark ULTIMATE POLO is as the source of the product rather than the product itself. See Yamaha Int'l Corp. v. Hoshino Gakki Co. Ltd., 840 F.2d 1572, 6 U.S.P.Q.2d 1001, 1006 (Fed. Cir. 1988); see also Trademark Manual of Examining Procedure ("TMEP") §§1212.01, 1212.03 (4th ed. rev. April 2005).

1. Applicant's Product Sales.

Applicant asserts that sales of [REDACTED] "Ultimate Polo" shirts between 1993 and 2005 demonstrate that the proposed mark has acquired sufficient distinctiveness to merit registration on the Principal Register.² See Applicant's Br. 5. Perhaps because these figures do not appear to be substantial on their face, and because they pale in comparison to the sales of goods in other cases where applicants have failed to demonstrate secondary meaning (see Target's Main Br. 14-18), Applicant argues strenuously that the relevant consumer market is "sun sensitive people rather than the ordinary consumer" (Applicant's Br. 3). Even accepting Applicant's premise *arguendo*, Applicant has submitted no evidence of the size of this allegedly distinct market (Stipulation ¶ 84), or of the "Ultimate Polo" shirt's share of this market. See Mana Products, Inc. v. Columbia Cosmetics MFG., Inc., 65 F.3d 1063, 1071 (2d Cir. 1995) (noting that manufacturer failed to submit, *inter alia*, any information on the "relative market share" of its cosmetics, and finding that it had not established that its trade dress had acquired secondary meaning). Indeed, it's not clear from the evidence submitted by Applicant that his "Ultimate Polo" shirt is even a substantial component of his own business, much less a substantial segment of the undelineated "sun protective clothing market" (Applicant's Br. 2). Without any reference to the size of the relevant market in which Applicant sells his shirts, there is no basis to conclude that his sales are substantial. See Tri-Star Pictures, Inc. v. Unger, 14 F.Supp.2d 339, 348 (S.D.N.Y. 1998) (stating that a "substantial segment" of the consuming public must identify the product with the source in order to establish secondary meaning).

Furthermore, Applicant's claim that the relevant market is comprised of only "sun sensitive" purchasers is undermined by his own catalogs, which solicit to a much broader class of consumers. The covers of the catalogs state that Applicant's company, Sun Precautions, Inc., offers "Medical Solutions For Sun Sensitive and Sun Sensible People." See Applicant's Br. 3;

² As noted in Target's main brief, Applicant does not even affix the words "Ultimate Polo" to his shirt, except in fine print on a removable hang tag. Applicant does *prominently* place his SOLUMBRA® trademark on both the hang tag and on a sewn-in neck tag. Target's Main Br. 10-11.

Stipulation ¶ 52 (emphasis added). The first page of a recent catalog further explains to whom Applicant markets and sells his products:

Some of our customers are sun sensible. That means they love being active outdoors but are prevention-minded enough to want safe and effective sun protection to thwart both short-term and long-term sun injury. And some of our customers are medically sun sensitive. In fact, some are among the most sun sensitive patients in the world.

APP 196 (emphasis added).

Applicant's catalogs contain testimonials from both "sun sensitive" and "sun sensible" customers, all of whom express their satisfaction with the SOLUMBRA® fabric from which Applicant's clothing is made. The testimonials of Applicant's "sun sensible" patrons underscores the broad range of customers to whom Applicant's products are marketed:

Peter O'Brien (pictured wearing an "Ultimate Polo" shirt): "I am on sports fields, out in the sun, virtually all day. With temperatures often exceeding 105°, I need more than just sunscreen. Solumbra gives me all-day sun protection and full range of motion -- which I definitely need as a P.E. teacher. Even though I'm covered from head to toe, I'm still incredibly cool." APP 554.

Jeff Jones: "I can be on the court 8 hours a day teaching tennis. Brutal in the Southern California sun . . . Before Solumbra, I used to just wear T-shirts and shorts -- capped off with what seemed like never-ending sunburn. And sunscreen? Forget about it. I'd sweat it off in 30 minutes. Solumbra keeps me cool and protected all day long." APP 204.

Elizabeth Dover: "The first place I ever wore Solumbra was to a beach party. Obviously, I needed all-day sun protection but I also wanted to look good. With Solumbra I got both -- plus the freedom to be active in the outdoors without fear of the sun." APP 560.

Karen Anderson and David Henderson: "For years my husband and I planned to do a 2 year hiking/biking trip around the world. Two of our main concerns were how to shield ourselves from the sun and how to pack our clothing into two 1.4 cubic foot bags. Solumbra saved us. One pair of pants, and two shirts protected me for two wonderful years. In fact, I rate Solumbra as the most

reliable piece of equipment on the trip . . . cool, comfortable and durable. APP 207.

Coach Syd Lovelace: "I've been wearing Solumbra since the early 1990's when I was the coach of a 200-person swim team in Nashville. Everyone thought I was crazy to wear shirts on hot summer days, but I always stayed cool . . . My mother used to preach 'take care of your skin or you'll end up looking like an old leather bag.' Mom was smart." APP 215.

These testimonials and others in Applicant's catalogs demonstrate that the relevant buyer class for the over one hundred products Applicant offers, including the "Ultimate Polo" shirt, is everyone who "want[s] safe and effective sun protection" (APP 196), including but not limited to people who exercise in the sun (APP 204), people who go to the beach (APP 560), people who travel to sunny places (APP 207), people whose mothers tell them to take care of their skin (APP 215), and everyone who wears "greasy sunscreens" (APP 554). While Applicant's line of SUN PRECAUTIONS® clothing may have been developed to meet the needs of "medically sun sensitive" people (Applicant's Br. 3), Applicant now markets and sells these products, including the "Ultimate Polo" shirt, to every consumer who spends time in the sun.

Standing alone, Applicant's sales of his "Ultimate Polo" shirts are hardly substantial, and Applicant has provided no evidence to the contrary. Given the high degree of descriptiveness of the term ULTIMATE POLO, Applicant's failure to prove substantial sales is fatal to his claim that his proposed mark has acquired secondary meaning.

2. Applicant's Non-Exclusive Use of the Designation "Ultimate Polo" for Shirts.

While Applicant has demonstrated continuous use of the proposed mark for the 12 years preceding his application, such use has not been substantially exclusive, and thus cannot serve as evidence of acquired distinctiveness. See Flowers Industries, Inc. v. Interstate Brands Corp., 5 U.S.P.Q.2d 1580, 1589-90 (T.T.A.B. 1987). The record demonstrates that Target and dozens of other companies sell their own "Ultimate Polo" shirts. See Stipulation ¶ 70; T000247-295. Applicant attempts to distinguish his "Ultimate Polo" shirt as being entirely unlike Target's

and other competitors' "conventional garments" (Applicant's Br. 1, 11) because of his shirt's sun-protective fabric (Applicant's Br. 3, 11), and other "technical features":

This is no ordinary polo, because its technical features make it cool, sun protective and ideal for active sports. Mesh panels under the arms and back yoke wick away perspiration and allow air to enter. Collar and cuffs are of a soft knit blend.

APP 210.

However, the sun-protection and other "technical features" of Applicant's shirts are not unique, even among shirts described as the "Ultimate Polo." At least two of Applicant's competitors trumpet "Ultimate Polo" shirts that offer protection from the sun, along with several of the same "technical features" lauded by Applicant. The "Denver Hayes Ultimate Golf Polo" is described as being "[m]ade of a soft, stretchy blend of TENCEL®, polyester and LYCRA®," making the shirt "Anti-Microbial," "Moisture-Wicking" and "**UV Blocker.**" See T000287 (emphasis added). Likewise, the "bette & court Ultimate Golf Polo," which is "100% polyester," offers "**UV-protection** (SPF20) and a moisture-wicking finish." See T000294 (emphasis added). Accordingly, Applicant is not the exclusive user of the "Ultimate Polo" designation even in the alleged smaller market for "sun protective" shirts.

3. Applicant's Quantitative Evidence of Promotion.

Applicant claims that his distribution of [REDACTED] SUN PRECAUTIONS® catalogs between 1996-2005 "confirm[s] that Applicant's use of the mark has been very substantial." Applicant's Br. 5, 8. However, it is essential to recognize that the catalogs promote Applicant's entire SUN PRECAUTIONS® clothing line and do little to prominently distinguish the proposed mark among the over one hundred other products sold in the catalog. Stipulation ¶ 56; APP 194-241. In addition, every customer testimonial in the catalogs, including those of Peter O'Brien (APP 554) and Greg Fisher (APP 209), who are pictured wearing Applicant's "Ultimate Polo" shirt, focuses on the attributes of SOLUMBRA® fabric rather than the particular garment he or she is pictured wearing. In light of this, Applicant's distribution of SUN PRECAUTIONS® catalogs does little to bolster his claim that promotion of the "Ultimate Polo"

shirt has been substantial. Indeed, Applicant has offered no evidence of advertising dedicated exclusively or even principally to the shirt.

Similarly, Applicant's proffered evidence of the Sun Precautions web site being visited approximately [REDACTED] times per month for an average of [REDACTED] minutes per visit (Applicant's Br. 5) is entirely irrelevant to the determination of whether Applicant's proposed mark has acquired distinctiveness. Applicant does not indicate how many visitors find their way through to a web page displaying the "Ultimate Polo" shirt, which is several clicks away from the home page. See Stipulation ¶ 87. Clearly, any visitor to the Sun Precautions web site will perceive the source of all of the goods found there to be SUN PRECAUTIONS® -- not ULTIMATE POLO.

4. References to Applicant's "Ultimate Polo" Shirts on Third-Party Web Sites.

Applicant describes two product reviews of his "Ultimate Polo" shirt as "evidence showing the recognition and discussion of ULTIMATE POLO brand products in the press." Applicant's Br. 9. Even assuming that the submission of a mere two articles mentioning the goods in question would otherwise assist the Applicant in establishing secondary meaning, neither of the articles relied upon references "Ultimate Polo" as a designation of source.

The first piece of "press" is a print out from a web site called "Gold Wing Product Reviews." See Stipulation ¶ 58; APP 174. Two reviews appear under the heading "Sun Precautions;" the first is for Applicant's "Super Active Shirts," and the second is for "Sun Precautions® Ultimate Polo shirts." The proposed mark appears only in tandem with the SUN PRECAUTIONS® mark, rather than independently. Applicant did not submit evidence establishing when this product review appeared, how many people visited the "Gold Wing Product Reviews" web site, or how many readers of the review clicked through to Applicant's web site, to which the review was apparently linked.

The second article cited by Applicant is from the web site wearablesbusiness.com, entitled "Fabric trends on the move and confirmed at the IFFE." See Stipulation ¶ 59; APP 176-

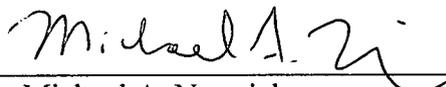
179. The article reports on textile collections presented at the April 1998 International Fashion Fabric Exhibition in New York, and on the last page discusses Sun Precautions, Inc. and SOLUMBRA® fabric. In that article there is *one* passing reference to Applicant's "Ultimate Polo" shirts (APP 179), hardly the "discussion of ULTIMATE POLO brand products in the press" claimed by Applicant. Applicant's Br. 9. The article treats the designation "Ultimate Polo" no differently than the designation "Men's Tailored Pants;" both are simply descriptive product names that convey the nature of each product, not the product's source. Based upon the above, the two articles submitted are wholly inadequate to evidence that Applicant's proposed mark has acquired distinctiveness.

CONCLUSION

For all of the reasons set forth above, and for the reasons stated in its Main Brief, the Opposer, Target Brands, Inc., respectfully submits that its Opposition should be sustained, and that Shaun N.G. Hughes' Application Serial No. 78/170,846 to register ULTIMATE POLO should be denied.

Respectfully submitted,

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Dated: February 15, 2007

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I hereby certify that this Opposer's Reply Brief was deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to the Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451, on the below date.

Date: February 15, 2007



Michael A. Norwick

Certificate of Service

I hereby certify that a true copy of this Opposer's Reply Brief dated February 15, 2007 was served via electronic mail to Applicant's counsel, James R. Uhlir, Chistensen O'Connor Johnson Kindness LLC, 1420 Fifth Avenue, Suite 2800, Seattle, WA 98101-2347, juhli@cojk.com, on the below date.

Date: February 15, 2007



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