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

Proceeding	91165585
Party	Plaintiff ELIZABETH GRADY FACE FIRST INC ELIZABETH GRADY FACE FIRST INC 222 BOSTON AVE MEDFORD, MA 02155
Correspondence Address	JERRY COHEN PERKINS SMITH & COHEN LLP ONE BEACON STREET BOSTON, MA 02108
Submission	Motion to Amend Pleading/Amended Pleading
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Signature	/howard susser/
Date	03/13/2006
Attachments	E Grady Motion To Amend.pdf (2 pages) e grady second amended notice.pdf (3 pages)

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

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ELIZABETH GRADY FACE FIRST, INC.)	
)	
Opposer,)	
)	Opposition No. 91165585
v.)	
)	
Sprint Communications Co. LP)	
)	
Applicant)	
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OPPOSER’S MOTION TO AMEND ITS NOTICE OF OPPOSITION

Opposer, Elizabeth Grady Face First, Inc., by its attorney, hereby moves pursuant to Trademark Rule 2.107, and Fed.R.Civ.P. 15(a), to amend its notice of opposition to add an additional ground for opposition to Applicant’s application for registration. Specifically, Opposer wishes to add abandonment as an additional basis for opposition.

In support of this motion, Opposer submits that the Board liberally grants motions to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party. See Fed. R. Civ. P. 15(a) and authorities cited in TBMP § 507 (2d ed. rev. 2004). This includes permitting an Opposer to amend its opposition to include a claim other than that originally pled. *Id.*

The discovery period has concluded, and Opposer’s testimony period is underway, to conclude on April 3, 2006.

To obtain a federal registration, Applicant must use the mark in commerce. 15 USC §1051(a). “Use’ of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.” 15 USC § 1127. A mark shall be

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SECOND AMENDED NOTICE OF OPPOSITION

Opposer, Elizabeth Grady Face First, Inc., a Massachusetts corporation having a principal place of business at 222 Boston Avenue, Medford, Massachusetts 02155 (“Opposer”), believes that it will be damaged by registration of the mark “WITH SPRINT, BUSINESS IS BEAUTIFUL,” as shown in Application Serial No. 78455833, in International Class 38 for “telecommunication services, namely, providing multiple user access to a global computer information network; local and long distance transmission of voice and data by means of wireless telephones; telephone communication services; telecommunication network services, namely, providing access to data transmission and reception services via fiber optic networks, audio and video conferencing services” and opposes the same. This Notice of Opposition is submitted in duplicate and the filing fee is enclosed herewith. If any additional fees are owed, please charge Deposit Account 03-2410, Order No. 31,300-2. A duplicate copy of this Notice is enclosed for accounting purposes.

As grounds, Opposer states the following:

1. Opposer is the owner of the mark “BUSINESS IS BEAUTIFUL,” Registration No. 1793848, filed February 10, 1993, registered September 21, 1993, and registration renewed in 2003, for “franchising services, namely offering technical assistance in the establishment and/or operation of skin care salons” in International Class 35.

2. Opposer has been using the mark BUSINESS IS BEAUTIFUL in interstate commerce in the United States at least as early as October of 1988, and on information and belief, began using the mark prior to any use by Applicant of the mark WITH SPRINT, BUSINESS IS BEAUTIFUL, or any similar mark. Therefore, Opposer has standing to oppose Applicant’s application for registration.

3. Opposer’s use of the mark BUSINESS IS BEAUTIFUL is directed at people associated with businesses as well as other consumers. Applicant’s use of the mark WITH SPRINT, BUSINESS IS BEAUTIFUL is directed at people associated with businesses as well as other consumers. Both parties’ ultimate goods/services store front retail outlets that can be in close proximity and potential customers, including but not limited to business owners and business employees, can easily visit/browse both parties’ outlets in one shopping trip. Media advertising of both parties’ ultimate services is made to the same markets at least in part.

4. Applicant’s mark, WITH SPRINT, BUSINESS IS BEAUTIFUL, so resembles Opposer’s previously registered mark, BUSINESS IS BEAUTIFUL, as to be likely, when used on or in connection with the services of the Applicant, to cause confusion, or to cause mistake, or to deceive consumers.

5. Applicant’s use or registration of the mark WITH SPRINT, BUSINESS IS BEAUTIFUL, in connection with the listed services, will damage Opposer.

6. Opposer states further that Applicant had communications with Opposer about the likelihood of confusion and stonewalled Opposer, but on information and belief, refrained from passing information concerning the parties' dispute over right to register to the PTO Trademark Law Office 110 which conducted *ex parte* examination of the application. This is an additional ground for refusing registration.

7. Opposer states further that Applicant has abandoned the applied-for mark since Applicant has discontinued use of the mark, intends to discontinue use of the mark, does not have a bona fide intent to use such mark in commerce now or in the future, and does not have the intent to resume such use. Accordingly, the mark should not be registered. 15 USC §§1051(a), §1127, and 1064(3).

For the foregoing reasons, and for reasons and facts expected to be developed during this proceeding, Opposer files this Second Amended Notice of Opposition.

Respectfully submitted,

Elizabeth Grady Face First, Inc.

by /Howard Susser/
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Certificate of Service

The undersigned hereby certifies that true copy of the above document was served on counsel for Applicant by regular mail and fax on the 13th day of March, 2006.

/Howard Susser/
Howard Susser