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March 27, 2006

VIA EXPRESS MAIL

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Re: U.S. Trademark Opposition No. 91169178  
AB Melka v. Poyzer, et. al.

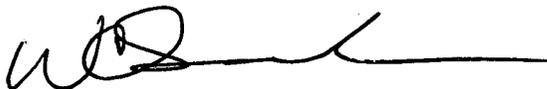
Dear Sir or Madam,

Enclosed for filing in the above-referenced proceeding are:

1. Applicant's FIRST AMENDED ANSWER AND COUNTERCLAIM
2. A check in the amount of \$300.00 for the counterclaim filing fee.
3. A self-addressed stamped envelope which I ask you to use as a filing receipt.

Please contact me if you have any questions.

Respectfully submitted,



Wm. Charles Saunders



03-27-2006

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #26

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

_____ )	
AB MELKA )	
)	
Opposer, )	Opposition No.: 91169178
)	
vs. )	Serial No. 78387272
)	Mark: TENSILE
MICHAEL JAMES POYZER and )	
SUSAN MARY POYZER )	
)	
Applicants. )	
_____ )	

**FIRST AMENDED ANSWER AND COUNTERCLAIM**

Applicants Michael James Poyzer and Susan Mary Poyzer (collectively “Applicants”), through their undersigned attorney, Wm. Charles Saunders, answer the averments in Opposer’s Notice of Opposition as numbered therein, and counterclaim to cancel Opposer’s Registration No. 2,992,664:

**ANSWER**

Opposer sets forth allegations in the preamble to its Notice of Opposition.

Applicants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the preamble, and therefore deny them.

1. Admitted in part and denied in part. Applicants admit only that the U.S. Patent & Trademark Office’s Trademark Application and Registration Retrieval (“TARR”) system identifies: Opposer as the owner of Registration No. 2,992,664 for TENSION for the recited goods; February 2, 2004 as the underlying application filing

date; September 9, 2005 as the registration date; and, Section 66(a) as the basis for the application and registration. Otherwise, Applicants are without knowledge or information sufficient to form a belief as to the truth or falsity of these allegations, and therefore deny them.

2. Admitted in part and denied in part. Applicants admit that their Application Serial No. 78/387,272 covers the recited goods, and was filed on March 19, 2004 under Section 44(e). Applicants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations, and therefore deny them.

3. Applicants deny that its TENSILE mark is "very similar" to Opposer's TENSION mark. Applicants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations, and therefore deny them.

4. Denied.

5. Admitted in part and denied in part. Applicants admit that registration would confer a prima facie exclusive right to use their mark on the goods covered by the registration. Applicants deny the remaining allegations.

6. Admitted in part and denied in part. Applicants admit that Opposer has granted Applicants no license, right or title in Applicants' mark. Applicants deny the remaining allegations.

#### COUNTERCLAIM

Applicants counterclaim to cancel Opposer's pleaded Registration No. 2,992,664 pursuant to Trademark Rule 2.106(b)(2)(i). This counterclaim is based on Applicants'

prior rights to their TENSILE mark, and hypothetically as permitted by Fed. R. Civ. P. 8(e)(2), on a likelihood of confusion, mistake and deception. Applicant alleges as follows:

1. Applicants are the owners of Application Serial No. 78/387,272 for the mark TENSILE filed on March 19, 2004 under Section 44(e), and subsequently opposed by Opposer.

2. Upon information and belief, Applicants first used their TENSILE mark on and in connection with at least bicycle components in the United States, in commerce in the United States and in foreign commerce with the United States, at least as early as December, 2003.

3. Upon information and belief, Opposer is the owner of record of Registration No. 2,992,664 for the mark TENSON for "jackets, wind-resistance jackets, trousers, slacks, shorts, breeches, knickers, socks, stockings, shirts, parkas, ski jackets, anoraks, ski pants, warm-up pants, ski ensembles comprising any combination of jackets, parkas, ski pants, and warm-up pants, ski suits, track suits, swimming trunks, swimming costumes, bikinis, beach tops, t-shirts, tank tops and beach jackets" granted September 6, 2005 and based on an application filed under Section 66(a) and having a filing date of February 2, 2004.

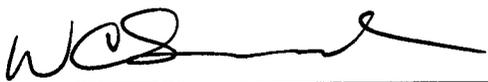
4. Upon information and belief, Applicants first used their TENSILE mark in the United States, in commerce in the United States and in foreign commerce with the United States, prior to any use upon which Opposer can rely of TENSON in the United States on the goods covered by Registration No. 2,992,664.

5. Upon information and belief, Applicants first used their TENSILE mark in the United States, in commerce in the United States and in foreign commerce with the United States, prior to February 2, 2004, the filing date of the application which became Registration No. 2,992,664.

6. If the Trademark Trial and Appeal Board should find, as Opposer contends, that Opposer's TENSION mark so resembles Applicants' TENSILE mark as to be likely, when applied to the parties respective goods, to cause confusion, or to cause mistake or to deceive, then Applicants will be damaged by the continued registration of Opposer's TENSION mark, and Registration No 2,992,664 should be cancelled.

WHEREFORE, Applicants respectfully request that Opposer's Notice of Opposition be dismissed and Opposer's Registration No. 2,992,664 be cancelled.

Respectfully submitted,

BY: 

Wm. Charles Saunders  
Attorney at Law  
311 Lindenwold Avenue  
Ambler, PA 19002

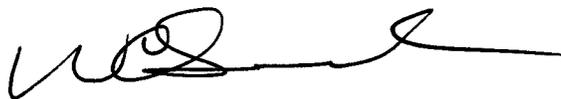
(215) 540-5580 (Phone)

(215) 540-5581 (Fax)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing FIRST AMENDED ANSWER AND COUNTERCLAIM has been furnished by FIRST CLASS MAIL, POSTAGE PREPAID, this 27th day of March, 2006 to:

Timothy H. Hiebert  
Samuels & Hiebert LLC  
Two International Place, 23<sup>rd</sup> Floor  
Boston, MA 02110



Wm. Charles Saunders, Attorney at Law

**CERTIFICATE OF EXPRESS MAILING**

I hereby certify that the foregoing FIRST AMENDED ANSWER AND COUNTERCLAIM, and the \$300.00 fee in the form of a check, has been deposited with the United States Postal Service, Express Mail Post Office to Addressee service, postage prepaid, this 27th day of March, 2006 for delivery to:

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, Virginia 22313-1451



Wm. Charles Saunders, Attorney at Law