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

Proceeding	91169225
Party	Plaintiff Cars Jeans & Casuals B.V.
Correspondence Address	Anne S. Mason Mason Law, P.L. 4755 East Bay Drive Clearwater, FL 33764 UNITED STATES mason@masonlaw.biz
Submission	Motion to Dismiss - Rule 12(b)
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Date	06/29/2006
Attachments	3977C003.Opposers Mtn to Dismiss.pdf (3 pages)(92473 bytes)

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

CARS JEANS & CASUALS, B.V.,

Opposer,

vs.

OPPOSITION NO.: 91169225

GETTY PETROLEUM MARKETING, INC.,

Applicant.

_____/

OPPOSER'S MOTION TO DISMISS

Opposer, CARS JEANS & CASUALS, B.V., by and through the undersigned attorney and pursuant to Rule 41(a)(2), Fed. R. Civ. Pro. and 37 C.F.R. § 2.127, seeks the entry of an order dismissing this opposition and as grounds therefor states:

1. On or about January 17, 2006, applicant's mark was published for opposition.

2. On February 17, 2006, opposer filed a notice of opposition, which it amended on March 20, 2006.

3. On or about April 10, 2006, applicant answered, asserting the following defenses: (1) failure to state a cause of action; (2) lack of standing; and (3) no likelihood of confusion.

4. The parties served discovery on each other, which, by stipulation is due June 30, 2006.

5. During the course of preparing discovery responses and investigating the merits of the applicant's affirmative defenses, opposer has determined that it should not

proceed with the opposition in light of the second affirmative defense and the difficulty in defending against the same.

6. Counsel for applicant was provided a stipulation to dismiss the opposition on June 28, 2006. However, applicant will not sign the stipulation unless the opposer agrees to certain conditions for settlement regarding uses of the respective marks. Per its counsel, if such agreement was not reached today, discovery would have to be completed.

7. The undersigned works with opposer through counsel located in Amsterdam and was unable to procure an agreement on the conditions in the time set by counsel for applicant. In an attempt to avoid the time and expense of completing discovery, opposer withdrew its discovery to applicant today.

8. Pursuant to Rule 41(b)(1), Fed. R. Civ. Pro., opposer asks that the TTAB dismiss the case without prejudice[1].

9. Rule 41(a)(2) provides that, unless the parties agree to a dismissal by stipulation, "an action shall not be dismissed at the plaintiffs' instance save upon order of the court and upon such terms and conditions as the court deems proper."

10. Dismissal of an action pursuant to Rule 41(a)(2) should be granted so long as there is no prejudice to the applicant. D'Alto v. Dahon California, Inc., 100 F.3d 281, 283 (2nd Cir. 1996); Zagano v. Forham University, 900 F.2d 12 (2nd Cir. 1990) (listing 5 factors to consider). See, also, Ohlander v. Larson, 114 F.3d 1531, 1537 (10th Cir. 1997).

[1] Opposer's counsel has communicated with foreign counsel regarding an agreement to dismiss the case with prejudice but has not yet received a response. Opposer's counsel will amend this motion should permission to seek leave to dismiss with prejudice is granted. Similarly, if the parties are able to reach a stipulation prior to a ruling on this motion, they will so advise the panel.

11. Since the discovery period has not ended, the testimony period has not begun, and applicant asserted no prejudice when presented with the stipulation for dismissal and instead proffered unrelated settlement terms, the motion to dismiss should be granted, without conditions.

WHEREFORE, opposer seeks the entry of an order dismissing this opposition without conditions and such other relief deemed reasonable by the court.

Mason Law, P.L. a
Professional Limited Liability Company

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Attorney for Opposer

Date: June 29, 2006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by electronic filing with the Trademark Trial and Appeal Board on this 29th day of June, 2006 upon: Cecelia Dempsey, Pitney Hardin LLP, 7 Times Square, New York, NY 10036-6524, Attorney for Applicant.

Anne S. Mason, Esq.

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