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

Proceeding	91170863
Party	Defendant Perfect Plus, Inc.
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Submission	Defendant's Notice of Reliance
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Date	11/12/2007
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SEXY HAIR CONCEPTS, LLC)	
)	
Opposer,)	Opposition No.: 91170863
)	App. Serial No.: 78/573,653
v.)	Mark: SEXY 'N SASSY
)	
PERFECT PLUS, INC.,)	
)	
Applicant.)	
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NOTICE OF RELIANCE

Perfect Plus, Inc., the Applicant, by its attorneys, hereby submits this Notice of Reliance pursuant to Rules 2.122(e) with accompanying exhibit 124.

Pursuant to Rule 2.122(e), Applicant relies on the following official record: Printout from the United States Patent and Trademark Office website of a December 10, 2003 Office Action (pp. 1-4) showing an Examining Attorney's Section 2(e)(1) Descriptive Refusal of the trademark SUPER SEXY STRIPPERS (Trademark Application Ser. No. 78/251313) based, in part, on the descriptive nature of the term SEXY. The Office Action printout has been attached as Exhibit 124. Exhibit 124 is relevant because it shows the descriptive nature of the term SEXY.

In addition, pursuant to TBMP 702, Applicant also provides notice that it intends to rely on the Deposition of Kenneth Browning and the Exhibits made of record during the Deposition, which are incorporated herein by reference and include the following:

Exhibit 100:
Perfect Plus' Notice of Deposition

Exhibit 101:
Perfect Plus' Application for SEXY N' SASSY (Ser. No. 78/573,653)

Exhibit 102:
Perfect Plus' Application for NICK CHAVEZ SEXY N' SASSY (Ser. No. 77/232,486)

Exhibit 103:

Perfect Plus' SEXY N' SASSY hair care products, *i.e.*, shampoo, conditioner, and shampoo and conditioner

Exhibit 104:

www.dictionary.com definition of the word "sexy"

Exhibit 105:

Magazine covers and articles using the term SEXY and HAIR

Exhibit 106:

Google search of the term "sexy" producing 289,000,000 results

Exhibit 107:

Google search of the terms "sexy" and "hair" producing 25,500,000 results

Exhibit 108:

Google search of the term "sexy" and "lips" producing 8,940,000 results

Exhibit 109:

Google search of the term "sexy" and "lipstick" producing 2,430,000 results

Exhibit 110:

Google search of the term "sexy" and "lip liner" producing 361,000 results

Exhibit 111:

Google search of the term "sexy" and "smile" producing 3,380,000 results

Exhibit 112:

Google search of the term "sexy" and "eyes" producing 19,400,000 results

Exhibit 113:

Google search of the term "sexy" and "mascara" producing 1,180,000 results

Exhibit 114:

Google search of the term "sexy" and "eyelashes" producing 700,000 results

Exhibit 115:

Google search of the term "sexy" and "eyeliner" producing 667,000 results

Exhibit 116:

Google search of the term "sexy" and "earrings" producing 1,990,000 results

Exhibit 117:

Google search of the term "sexy" and "nail polish" producing 784,000 results

Exhibit 118:

Google search of the term "sexy" and "makeup" producing 3,180,000 results

Exhibit 120:

Thomson & Thomson Trademark Search Report, conducted on May 25, 2001, for the term SEX in connection with hair care goods and services

Exhibit 121:

Nick Chavez Product Catalogue

Exhibit 122:

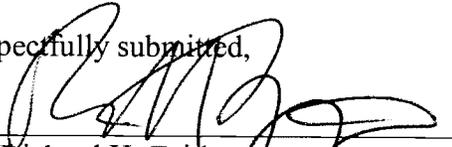
Photocopy of a packet of cream

Exhibit 123:

Printout of other SEXY N' SASSY products

A copy of Exhibits 100 through 118 and 120 through 123 have been attached to the transcript of the Deposition of Kenneth Browning.

Respectfully submitted,



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Attorney for Applicant
Perfect Plus, Inc.

Dated: Los Angeles, California
October 11, 2007

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing **NOTICE OF RELIANCE** was served, via prepaid First Class Mail, on October 11, 2007, upon counsel for Opposer at the following address:

Roberta Jacobs-Meadway
Ballard Shaphr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103-7599



Inga De La Rosa

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/251313

APPLICANT: CAIN MIKE R.

CORRESPONDENT ADDRESS:
CAIN MIKE R.
807 DELAWARE AVE
VIRGINIA BEACH VA 23451-4626

RETURN ADDRESS:
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514
ecom105@uspto.gov

MARK: SUPER SEXY STRIPPERS

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 78/251313

The assigned trademark examining attorney has reviewed the referenced application filed on May 19, 2003, and has determined the following.

Search Results

The Office records have been searched and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

Section 2(e)(1) - Descriptive Refusal

Registration is refused because the proposed mark merely describes the purpose of applicant's goods and/or services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); TMEP §§1209 *et seq.*

A mark is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), if it describes an ingredient,

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affered by Perfect Plus

quality, characteristic, function, feature, purpose or use of the relevant goods/services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984); *In re Bright#Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); TMEP §1209.01(b).

The proposed mark is SUPER SEXY STRIPPERS for "a consulting company, which provides consulting and services for entertainment bureaus nationally." The proposed mark describes the services, which are consulting services for super sexy strippers.

SUPER is a laudatory term which attributes quality or excellence to the services. Laudatory terms, those which attribute quality or excellence to goods or services, are equivalent to other descriptive terms under Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1). That is, laudatory terms are nondistinctive and unregistrable without proof of acquired distinctiveness. *Exquisite Form Industries, Inc. v. Exquisite Fabrics of London*, 378 F. Supp. 403, 183 USPQ 666 (S.D.N.Y. 1974) (EXQUISITE); *In re Ervin*, 1 USPQ2d 1665 (TTAB 1986) (THE ORIGINAL); *In re Inter#State Oil Co.*, 219 USPQ 1229 (TTAB 1983) (PREFERRED); *In re Royal Viking Line A/S*, 216 USPQ 795 (TTAB 1982) (WORLD CLASS); *In re Wileswood, Inc.*, 201 USPQ 400 (TTAB 1978) (AMERICA'S BEST POPCORN! and AMERICA'S FAVORITE POPCORN!). The wording SEXY STRIPPERS describes the purpose of the services which is to provide consultation about sexy stripper businesses to entertainment bureaus.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

Informality

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informality.

Recitation of Services

The recitation of services is unacceptable as indefinite because it does not specify the type of consultation services. The applicant may adopt the following recitation, if accurate:

BUSINESS CONSULTATION FOR ENTERTAINMENT BUREAUS NATIONALLY CONCERNING THE BUSINESS OPERATIONS OF STRIPPER ESTABLISHMENTS in International Class 35.

. TMEP §1402.11.

For aid in selecting acceptable identification of goods and services and determining proper classification, the searchable Manual of Acceptable Identification of Goods and Services is available on the Agency website at www.uspto.gov.

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, the applicant may not amend to include any goods or services that are not within the scope of the goods and services recited in the present identification.

Classification

Because of the broad language used by applicant in the recitation of services, applicant may have to add an additional international class(es) as indicated above upon the applicant's amending the recitation of services to specify the services.

Additional Classes

If the applicant prosecutes this application as a combined, or multiple#class, application based on use in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a), the applicant must comply with each of the following:

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- offered by Perfect Plus

(1) The applicant must specifically identify the services in each class and list the services by international class with the classes listed in ascending numerical order. TMEP §1403.01.

(2) The applicant must submit a filing fee for each international class of goods/services not covered by the fee already paid. 37 C.F.R. §§2.6(a)(1) and 2.86(b); TMEP §§810.01 and 1403.01. Effective January 1, 2003, the fee for filing a trademark application is \$335 for each class. This applies to classes added to pending applications as well as to new applications filed on or after that date.

(3) The applicant must submit:

(a) dates of first use and first use in commerce and one specimen for each class that includes goods or services based on use in commerce under Trademark Act Section 1(a). The dates of use must be at least as early as the filing date of this application, 37 C.F.R. §§2.34(a)(1) and 2.86(a), and the specimen(s) must have been in use in commerce at least as early as the filing date of the application, and/or

(b) a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class that includes goods or services based on a bona fide intention to use the mark in commerce under Trademark Act Section 1(b), where such statement was not included for the goods or services in the original application.

(4) The applicant must submit an affidavit or a declaration under 37 C.F.R. §2.20 signed by the applicant to verify (3) above. 37 C.F.R. §§2.59(a) and 2.71(c).

Specimen

Applicant must submit (1) a specimen (i.e., an example of how applicant actually uses its mark in the sale or advertising of its services) showing the mark as it is used in commerce, and, (2) a statement that "the specimen was in use in commerce at least as early as the filing date of the application," verified with a notarized affidavit or signed declaration under 37 C.F.R. §2.20. 37 C.F.R. §2.59(a); TMEP §904.09.

A specimen showing use of the mark in the sale or advertising of the identified services is required for an application based on use of the mark in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a). TMEP §904. The instant application does not include a specimen.

Examples of acceptable specimens for services are signs, photographs, brochures, website printouts or advertisements that show the mark used in the sale or advertising of the services. TMEP §§1301.04 *et seq.*

Substituting Basis

If the applicant cannot comply with the requirement for a specimen of use for the 1(a) basis asserted, the applicant may substitute a different basis for filing if the applicant can meet the requirements for the new basis.

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Filed by Perfect Plus

In this case, the applicant may wish to amend the application to assert a 1(b) basis.

Fee Increase

Fee increase effective January 1, 2003

Effective January 1, 2003, the fee for filing an application for trademark registration will be increased to **\$335.00** per International Class. The USPTO will not accord a filing date to applications that are filed on or after that date that are not accompanied by a minimum of \$335.00.

Additionally, the fee for amending an existing application to add an additional class or classes of goods/services will be \$335.00 per class for classes added on or after January 1, 2003.

/Carol Spils/
Carol Spils
Examining Attorney
Law Office 105
(703)308-9105 ext. 154
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How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit <http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via E-mail, visit <http://www.uspto.gov/web/trademarks/tmelecresp.htm> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

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Perfect Plus