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

Proceeding	91174297
Party	Plaintiff BRANDSTORM INC. BRANDSTORM INC. ,
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of
Application Serial Nos. 78857705
For the mark HIMALAYAN GOJI
JUICE
Published in the Official Gazette on
October 24, 2006

BRANDSTORM INCORPORATED) Opposition No. 91174297
)
 Opposer,)
)
 v.)
)
FREELIFE INTERNATIONAL, LLC)
)
 Applicant.)

MOTION TO REOPEN TIME

BrandStorm Inc. (“Opposer”),
a California corporation
10853 Venice Boulevard, Suite 2
Los Angeles, California 90034

Pursuant to Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 509.01(b), the above-identified Opposer kindly requests the Trademark Trial and Appeal Board (“Board”) to reopen time in Opposition No. 91174297. The Opposer seeks an opportunity to file a reply to the Applicant’s motion to dismiss the opposition for lack of standing and failure to state a claim.

The Opposer’s failure to act during the time allotted was due to excusable neglect. TBMP Section § 509.01(b) requires that all relevant circumstances be considered, including: (1) danger of prejudice to nonmovant; (2) length of delay and its potential impact on judicial proceedings; (3) reason for delay, including whether it was within the reasonable control of the movant; and (4) whether movant acted in good faith.

An important relevant circumstance in this particular case concerns the filing of another opposition by Opposer. Serial No. 76652196 was published for opposition on

April 10, 2007. This is the exact same trademark as in this opposition for Serial No. 78857705 but for a different class. Opposer is going to challenge this registration and make all the same arguments it made in this opposition. In addition, Applicant will address the two main issues made by the Applicant in its reply motion and demonstrate that Opposer does have standing and did state a proper claim. Opposer requests the opportunity to proceed with this opposition and related opposition No. 91174812 because the Board will have to review the same arguments for the opposition that will be filed for Serial No. 76652196. Opposer believes the Board can adjudicate all three oppositions together because the trademarks are either identical or similar, the parties are exactly the same and Opposer's arguments apply to all three oppositions.

The Opposer in this case has acted in good faith and continues to act in good faith. It simply requests an opportunity to reply because Applicant's motion lacks merit. In addition, the trademarks Applicant intends to register will not pass muster. Opposer has shown that pursuant to TBMP § 309.03(c), which provides an exemplary list of grounds for opposition or cancellation, applicant's marks fall into specific examples given in this section. Applicant's marks are merely descriptive or deceptively misdescriptive of them and defendant's mark is primarily geographically descriptive or primarily geographically deceptively misdescriptive of them. Opposer can also demonstrate, pursuant to TBMP 309.03 that it has a personal interest in the outcome of the proceeding and a reasonable basis for its belief in damage. There is no requirement that actual damage be pleaded and proved in order to establish standing or to prevail in an opposition or cancellation proceeding.

There is no danger of prejudice to the nonmovant in this opposition. As defined in § 509.01(b), prejudice to the nonmovant means a limitation or restriction on the nonmovant's ability to litigate the case. Opposer's delay has not resulted in a loss or unavailability of evidence for the Applicant. Opposer's delay only prejudices its own position in the opposition. Applicant still has the same ability to challenge the opposition as it would have if Opposer's reply had been received into evidence.

The length of the delay will not delay the discovery period for the opposition. The discovery period was set to open on December 20, 2006 and to close on June 18, 2007. If the Board reopens time, there will still be sufficient time to conduct discovery

and stay within the time parameters allotted for the opposition. The final rebuttal testimony period is not until December 30, 2007, more than seven months away. There is ample time for the parties to continue with the opposition.

The opposition was delayed due to the misunderstanding that the proceedings in this opposition were suspended pending the disposition of Applicant's motion to dismiss. The Board suspended proceedings on January 22, 2007, making it unclear as to when, if ever, Opposer was to file a reply. On March 15, 2007, when Opposer called to inquire about the status of this opposition, paralegal Millie Kennedy told Opposer that she would assign this opposition and related Opposition No. 91174812 to the same attorney, due to the fact that the parties and the motion filed by Applicant were exactly the same in both oppositions. Ms. Kennedy suggested Opposer call the attorney in charge of the oppositions, Thomas Wellington, to inquire whether Opposer should file its reply to Applicant's motion. Although Opposer told Mr. Wellington it would get the reply in that same day, Mr. Wellington, within an hour of receiving Opposer's telephone call, chose to dismiss the oppositions as conceded rather than deny Applicant's motion on its merits.

The Board, pursuant to TTAB Manual of Procedure § 502.04, may decline to treat an uncontested motion as conceded, and may grant or deny the motion on its merits. Opposer strongly feels that Applicant's motion lacks merit. Opposer simply requests the Board, pursuant to TTAB Manual of Procedure § 502.04, to allow it to demonstrate why Applicant's motion lacks merit and the registration should be denied.

Please address all communications to John Arai Mitchell, Esq., Arai Mitchell pc, 453 South Spring Street, Suite 930, Los Angeles, California 90013.

Dated: 13 April 2007

Respectfully submitted,

ARAI MITCHELL pc

By:


John Arai Mitchell

Attorney for Opposer
BRANDSTORM INC.