

ESTTA Tracking number: **ESTTA199713**

Filing date: **03/20/2008**

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

Proceeding	91177192
Party	Defendant Martanna LLC
Correspondence Address	HOWARD G. SLAVIT SAUL EWING LLP SUITE 1000, THE WATERGATE WASHINGTON, DC 20037-1922 UNITED STATES hslavit@saul.com, sbates@saul.com, okolawole@saul.com
Submission	Motion for Summary Judgment
Filer's Name	Olamide M. Kolawole
Filer's e-mail	okolawole@saul.com, hslavit@saul.com, srutngamlug@saul.com
Signature	/olamide kolawole/
Date	03/20/2008
Attachments	int9029.PDF (19 pages)(216898 bytes) int902A.PDF (41 pages)(504385 bytes)

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

NAUTICA APPAREL, INC.,)	
)	
Opposer,	)	Opposition No. 91177192
)	
v.	)	Mark: GET NAUTI
)	
MARTANNA L.C.,	)	Serial No. 78610037
)	
Applicant.	)	Filed: April 15, 2005

**APPLICANT MARTANNA L.C.'S MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM IN SUPPORT THEREOF**

On the brief:

Howard G. Slavitt, Esq.
John Totaro, Esq.
Saul Ewing LLP
2600 Virginia Avenue, NW
Suite 1000 – The Watergate
Washington, DC 20037
(202) 295-6604 Tel.
(202) 295-6704 Fax
hslavitt@saul.com

TABLE OF CONTENTS

Table of Contents..... i

Table of Cases and Authorities..... ii

Statement of Undisputed Material Facts..... 1

Argument..... 4

 I. Summary Judgment Should Be Granted In Favor of Martanna Because
 Opposer Has Not Established Priority In Its Alleged Marks for Purposes of Its Claim
 of Priority and Likelihood of Confusion Under 15 U.S.C.S. § 1052(d)..... 4

 A. Opposer Has Not Established the Priority of Its Alleged Registered
 Marks Over Martanna’s GET NAUTI Mark..... 4

 B. Opposer Cannot Establish the Priority of Its Alleged Marks, for which
 Intent-To-Use Based Applications are Pending, Over Martanna’s GET NAUTI Mark 5

 II. Summary Judgment Should Be Granted In Favor of Martanna Because
 Opposer Cannot Otherwise Prevail On Its Likelihood of Conclusion Claim..... 6

 A. Martanna’s GET NAUTI Mark is Dissimilar in Appearance, Sound,
 Connotation and Commercial Impression from Opposer’s Marks..... 8

 i. Martanna’s GET NAUTI Mark is dissimilar in appearance from
 each of Opposer’s Marks..... 8

 ii. Martanna’s GET NAUTI Mark is dissimilar in sound from each
 of Opposer’s Marks..... 10

 iii. Martanna’s GET NAUTI Mark is dissimilar in connotation and
 commercial impression from each of Opposer’s Marks..... 10

 B. Goods Described in Martanna’s Application are Dissimilar from Goods
 Associated with Opposer’s Marks..... 12

 III. Summary Judgment Should Be Granted In Favor of Martanna Because
 Opposer Cannot Prevail on Its Dilution Claim..... 12

TABLE OF CASES AND AUTHORITIES

CASES	Page(s)
<u>Champagne Louis Roederer, S.A. v. Delicato Vineyards</u> , 148 F.3d 1373, 1375, 47 U.S.P.Q.2d 1459 (Fed. Cir. 1998).....	7 - 8
<u>In re E.I. DuPont DeNemours & Co.</u> , 476 F.2d 1357, 1361, 177 U.S.P.Q. (BNA) 563, 567 (C.C.P.A. 1973).....	7
<u>Kellogg Co. v. Pack’Em Enterprises, Inc.</u> , 951 F.2d 330, 332 - 33, 21 U.S.P.Q.2d (BNA) 1142 (Fed. Cir. 1991).....	8
<u>King Candy Co. v. Eunice King’s Kitchen, Inc.</u> , 496 F.2d 1400, 182 U.S.P.Q. (BNA) 108 (C.C.P.A. 1974).....	4
<u>Larami Corp. v. Talk To Me Programs, Inc.</u> , 36 U.S.P.Q.2d (BNA) 1840, 1844 (T.T.A.B. 1995).....	5
<u>Lever Bros. Co. v. Barcolene Co.</u> , 59 C.C.P.A. 1162, 1164, 463 F.2d 1107, 1108 – 09 (C.C.P.A. 1972).....	11
<u>Massey Jr. College, Inc. v. Fashion Institute of Tech.</u> , 492 F.2d 1399, 1402, 181 U.S.P.Q. (BNA) 272, 273 (C.C.P.A. 1974).....	9
<u>Presto Products, Inc. v. Nice-Pak Products, Inc.</u> , 1988 TTAB LEXIS 60, at *8, 9 U.S.P.Q.2d (BNA) 1895 (T.T.A.B. 1988).....	9
<u>Zirco Corp. v. Am. Tel. & Tel. Co.</u> , 21 U.S.P.Q.2d (BNA) 1542, 1544 (T.T.A.B. 1991).....	5

RULES

Federal Rule of Civil Procedure 56(c).....	1, 4
Section 528.01 of Trademark Trial and Appeal Board Manual of Procedure.....	1

STATUTES

15 U.S.C.S. § 1052(d).....	7
15 U.S.C.S. § 1057(c).....	5
15 U.S.C.S. § 1125(c)(1).....	13
15 U.S.C.S. § 1125(c)(2)(B).....	13
15 U.S.C.S. § 1125(c)(2)(B)(i).....	13

TREATISES

4 J. Thomas McCarthy, <u>McCarthy on Trademarks and Unfair Competition</u> , § 24:116, at p. 24 – 322 (4 th Ed., 2007).....	14
4 J. Thomas McCarthy, <u>McCarthy on Trademarks and Unfair Competition</u> , § 24:117, at p. 24-329 (4 th Ed., 2007) (citation omitted).....	13

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

NAUTICA APPAREL, INC.,)	
)	
Opposer,	)	Opposition No. 91177192
)	
v.	)	Mark: GET NAUTI
)	
MARTANNA L.C.,	)	Serial No. 78610037
)	
Applicant.	)	Filed: April 15, 2005

**APPLICANT MARTANNA L.C.'S MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM IN SUPPORT THEREOF**

Applicant Martanna L.C. (“Martanna” or “Applicant”), by counsel, moves the Trademark Trial and Appeal Board (the “Board”), pursuant to Section 528.01 of the Trademark Trial and Appeal Board Manual of Procedure and Federal Rule of Civil Procedure 56(c), for entry of an order granting summary judgment in Martanna’s favor against opposer Nautica Apparel, Inc. (“Opposer”). Martanna submits the following memorandum in support of its motion for summary judgment:

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On April 15, 2005, Martanna filed its Trademark/Service Mark Application, Principal Register for the mark GET NAUTI with the United States Patent and Trademark Office (the “Application”). The Application provided that Martanna intended to use the GET NAUTI mark (the GET NAUTI mark shall hereinafter be referred to as the “GET NAUTI Mark”) in commerce on or in connection with certain identified goods and/or services in International Classes 3, 18 and 25. (See the Application at the “Goods and/or Services Section[s]”).

2. An Office Action was instituted in response to the Application on November 22, 2005. In that Office Action, the United States Patent and Trademark Office (the “PTO”)

preliminarily refused to register the GET NAUTI Mark because the GET NAUTI Mark, “when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 2,706,636, as to be likely to cause confusion, to cause mistake, or to deceive.” (Office Action at “Refusal to Register – Confusingly Similar” section). The PTO also found that “[t]here may be a likelihood of confusion between” the mark identified in Application Serial No. 76/50177 and the GET NAUTI Mark. (See Office Action at “Citation to Pending Reference” section).

3. U.S. Registration No. 2,706,636, as referred to in the Office Action, was for the word mark NAUTI GEAR. (Office Action at Attachment #1). Application Serial No. 76/50177, as referred to in the Office Action, was for the word mark I GOT “NAUTI”. (Office Action at Attachment #3). Significantly, the PTO did not identify the GET NAUTI Mark as likely to cause confusion, to cause mistake, or to deceive with any of the registered marks that Opposer identifies as the basis for its opposition to the PTO’s registration of Martanna’s GET NAUTI Mark. (See generally Office Action). The PTO further did not find that there was a potential likelihood of confusion between the GET NAUTI Mark and any of the marks that Opposer identifies in its Notice of Opposition as having applications pending for potential registration. (See generally Office Action).¹

4. On May 17, 2006, Martanna filed its Amendment and Response to Office Action (the “Response”). In the Response, Martanna deleted International Class 18 from its Application, amended its recitation of goods in International Classes 3 and 25, noted that the PTO had issued a Notice of Abandonment of the application for the I GOT “NAUTI” mark, and

¹ Martanna recognizes that of the 11 pleaded marks in the Notice of Opposition that had applications pending when the Opposition was filed, only 3 of those applications had been filed with the PTO when the Office Action was instituted.

argued that the GET NAUTI Mark was not likely to cause confusion, to cause mistake, or to deceive with respect to the NAUTI GEAR mark. (See the Response at pp. 1 – 8).

5. On March 14, 2007, the PTO issued a Notice of Publication Under 12(a) for Martanna's GET NAUTI Mark. On May 1, 2007, Opposer filed its Notice of Opposition Pursuant to 15 U.S.C. § 1063 (the "Opposition") with the Board. The Board generated a Notice of Opposition in conjunction with Opposer's Notice of Opposition Pursuant to 15 U.S.C. § 1063 (the "Notice"). In the Opposition, Opposer alleges that it owns 54 (fifty-four) marks listed therein with the registration or application numbers identified therein.

6. In the Opposition, Opposer identifies registration numbers for 43 (forty-three) of the 54 (fifty-four) trademarks Opposer alleges it owns. (Opposition at ¶ 5).

7. In the Opposition, Opposer also identifies serial numbers and application dates, with no registration numbers, for the remaining 11 (eleven) of the 54 (fifty-four) marks Opposer alleges it owns. (Opposition at ¶ 5). Opposer admits that applications for these 11 marks were pending when this action was filed. Id.

8. Since this action was filed, 1 (one) of the 11 (eleven) applied for marks, NAUTICA GOLF with application serial no. 78275303, has been registered and obtained a registration number. (See Trademark Applications and Registration Retrieval ("TARR") for Registration No. 3272760, found at <http://tarr.uspto.gov/tarr?regser=registration&entry=3272760&action=Request+Status>, a copy of which is attached hereto as Exhibit A) (Hereinafter Registration No. 3272760 and the 43 marks that Opposer identifies in its Opposition as registered trademarks are collectively referred to as "Opposer's Marks").

9. Further, since this action was filed, the application for 1 (one) of the 11 (eleven) applied for marks, NAUTICA GOLF with application serial no. 78275470, has been abandoned. (See TARR for application serial no. 78275740, found at

<http://tarr.uspto.gov/tarr?regser=serial&entry=78275470&action=Request+Status>, a copy of which is attached hereto as Exhibit B).

10. Finally, since this action was filed, the remaining 9 (nine) applications of the 11(eleven) applied for marks are still pending. (See TARR for application serial nos. 78713715, 78763730, 78912365, 78963691, 77081223, 77081234, 77085720, 77085766, and 77085787, found at <http://tarr.uspto.gov/> by selecting “U.S. Serial Number” and entering each application serial no. in the field provided, copies of which are attached collectively hereto as Exhibit C). Opposer filed these 9 applications on an intent-to-use basis only. Id.

ARGUMENT

A party is entitled to summary judgment if it can demonstrate that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Federal Rule of Civil Procedure 56(c). In the instant matter, no material facts are in dispute and judgment should be entered in favor of Martanna.

I. **SUMMARY JUDGMENT SHOULD BE GRANTED IN FAVOR OF MARTANNA BECAUSE OPPOSER HAS NOT ESTABLISHED PRIORITY IN ITS ALLEGED MARKS FOR PURPOSES OF ITS CLAIM OF PRIORITY AND LIKELIHOOD OF CONFUSION UNDER 15 U.S.C.S. § 1052(d)**

A. **Opposer Has Not Established the Priority of Its Alleged Registered Marks Over Martanna’s GET NAUTI Mark**

Opposer alleges the priority of the 54 marks Opposer identifies in its Opposition over Martanna’s GET NAUTI Mark. (See, Opposition at ¶¶ 5, 11 and 15). In order to establish the priority of the marks that Opposer alleges are registered (43 in number total), Opposer must make those pleaded registrations a part of this record. See King Candy Co. v. Eunice King’s Kitchen, Inc., 496 F.2d 1400, 182 U.S.P.Q. (BNA) 108 (C.C.P.A. 1974). Opposer has not made the 43 pleaded registrations a part of this record, nor has it made Registration No. 3272760 for

the NAUTICA GOLF trademark a part of this record (collectively, “Opposer’s Marks” as previously defined in ¶ 8 of the Statement of Undisputed Material Facts). Accordingly, summary judgment should be entered in favor of Martanna on Opposer’s priority and likelihood of confusion claim with respect to Opposer’s Marks.

B. Opposer Cannot Establish the Priority of Its Alleged Marks, for which Intent-To-Use Based Applications are Pending, Over Martanna’s GET NAUTI Mark

Nine of the marks that Opposer has alleged and referred to in support of its priority and likelihood of confusion claim are marks for which intent-to-use based applications are pending. See Opposition at ¶ 5 and Exhibit C. For purposes of establishing priority, Opposer may claim the filing date of the applications for these marks as the dates of constructive use of these marks. See § 7(c) of the Trademark Act of 1946 (“Section 7(c)”), 15 U.S.C.S. § 1057(c) (“Contingent on the registration of a mark on the principal register provided by this chapter, the filing of the application to register such mark shall constitute constructive use of the mark, conferring a right of priority, nationwide in effect, on or in connection with the goods or services specified in the registration . . .”). See, also, Zirco Corp. v. Am. Tel. & Tel. Co., 21 U.S.P.Q.2d (BNA) 1542, 1544 (T.T.A.B. 1991) (finding that intent-to-use applicant is entitled to rely on the constructive use date of its application pursuant to Section 7(c) prior to actual use and registration of applicant’s mark. If such reliance was not permitted, the applicant “would be rendered defenseless in any opposition against the registration of its mark based on likelihood of confusion.”); Larami Corp. v. Talk To Me Programs, Inc., 36 U.S.P.Q.2d (BNA) 1840, 1844 (T.T.A.B. 1995) (“To require registration of an applicant’s mark prior to realization of its rights under Section 7(c) would defeat the purpose of filing applications based on intent-to-use.”). As Opposer admits in the Opposition at ¶ 5 and as reflected in Exhibit C attached hereto, the earliest

dates that Opposer may rely upon as the constructive dates of use for the marks for which applications are pending are as follows:

MARK	SERIAL NO.	APPLICATION DATE
NAUTICA	77085720	1/18/2007
NAUTICA	77085766	1/18/2007
NAUTICA	77085787	1/18/2007
NAUTICARE	77081223	1/11/2007
NAUTICA OPTIONS	77081234	1/11/2007
NAUTICA BERMUDA BLUE	78963691	8/30/2006
NAUTICA ISLAND	78912365	6/20/2006
NAUTICA	78763730	11/30/2005
NAUTICA NAVY	78713715	9/15/2005

The earliest date upon which Opposer may base a priority claim over Martanna’s GET NAUTI Mark is September 15, 2005. (See Opposition at ¶ 5 and Exhibit C). Martanna filed its Application on April 15, 2005. (See the Application at p. 1 of 2). April 15, 2005 is earlier than September 15, 2005. Opposer, therefore, is not entitled to a finding that Opposer’s marks for which applications are pending have priority over Martanna’s GET NAUTI Mark. Accordingly, summary judgment should be entered in favor of Martanna on Opposer’s priority and likelihood of confusion claim with respect to those 9 marks of Opposer for which applications are pending.

II. SUMMARY JUDGMENT SHOULD BE GRANTED IN FAVOR OF MARTANNA BECAUSE OPPOSER CANNOT OTHERWISE PREVAIL ON ITS LIKELIHOOD OF CONFUSION CLAIM

Opposer alleges that Martanna’s intended use and registration of the GET NAUTI Mark “will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant’s Goods and Services are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer” (Opposition

at ¶ 16).² A comparison of Martanna’s GET NAUTI Mark to each of Opposer’s Marks under applicable law, however, demonstrates that the GET NAUTI Mark is not likely to be confused with any of Opposer’s Marks.³

Section 1052 of Chapter 22 of Title 15 of the United States Code provides that “[n]o trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it - -”

[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.”

15 U.S.C.S. § 1052(d). The Board considers several factors when determining whether a likelihood of confusion exists between marks. See In re E.I. DuPont DeNemours & Co., 476 F.2d 1357, 1361, 177 U.S.P.Q. (BNA) 563, 567 (C.C.P.A. 1973) (referred to herein as the “*DuPont* factors”). The most relevant *DuPont* factor to consider in the instant matter is the “similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” Id. The dissimilarity of opposing marks can be a dispositive factor rendering a party unable to proceed on a likelihood of confusion claim. See, e.g., Champagne Louis Roederer, S.A. v. Delicato Vineyards, 148 F.3d 1373, 1375, 47 U.S.P.Q.2d 1459 (Fed. Cir. 1998) (affirming the Board’s dismissal of an opposition alleging likelihood of confusion between applicant’s CRYSTAL CREEK mark and opposer’s CRISTAL and CRISTAL CHAMPAGNE marks. According to the Board, the dissimilarities of the marks in appearance, sound, significance and commercial impression alone “precluded any reasonable

² As indicated above, the PTO did not cite to any of Opposer’s Marks as a potential basis to preclude registration of Martanna’s GET NAUTI Mark. (See ¶ 3 of Statement of Undisputed Material Facts).

³ For purposes of this argument, Martanna assumes that Opposer may seek to cure the defect that currently exists concerning the priority of Opposer’s Marks. For this reason, Martanna is herein also addressing Opposer’s claim of likelihood of confusion with respect to Opposer’s Marks.

likelihood of confusion.”). See, also, Kellogg Co. v. Pack’Em Enterprises, Inc., 951 F.2d 330, 332 - 33, 21 U.S.P.Q.2d (BNA) 1142 (Fed. Cir. 1991) (affirming the Board’s grant of summary judgment in applicant’s favor and finding that the Board correctly determined that the “first *duPont* factor simply outweighs all of the others which might be pertinent to this case.”).

Martanna’s GET NAUTI Mark differs substantially in appearance, sound, connotation and commercial impression from Opposer’s Marks such that Opposer cannot maintain its likelihood of confusion claim. Moreover, the dissimilarity of Martanna’s goods as described in the Application from those goods associated with Opposer’s Marks bolsters Martanna’s position that Opposer’s claim is not properly before the Board.

A. Martanna’s GET NAUTI Mark is Dissimilar in Appearance, Sound, Connotation and Commercial Impression from Opposer’s Marks

- i. Martanna’s GET NAUTI Mark is dissimilar in appearance from each of Opposer’s Marks.

Martanna’s GET NAUTI Mark is dissimilar in appearance to each of Opposer’s Marks.⁴ First, the GET NAUTI Mark does not share one word in common with any of Opposer’s Marks. See generally Opposition at ¶ 5. Martanna’s mark consists of two words, the word GET and the word NAUTI. The 44 (forty-four) Opposer’s Marks can be divided into the following five categories of marks:

(1) the word NAUTICA (21 registered trademarks);

(2) the word NAUTICA followed by one word (e.g., NAUTICA BEACH) (12 registered trademarks);

(3) the word NAUTICA followed by 2 or 3 words (e.g., NAUTICA BERMUDA TABLEWARES) (3 registered trademarks);

⁴ That Opposer allegedly has a number of registered marks does not change the fact that Martanna’s GET NAUTI Mark and Opposer’s Marks, as discussed herein, are not confusingly similar.

(4) the word NAUTICA combined with the word KIDS (NAUTICAKIDS) (7 registered trademarks); and

(5) the word NAUTEX (1 registered trademark).

43 of the 44 of Opposer's Marks, as indicated above, either consist solely of the word NAUTICA or consist of a combination of words beginning with the word NAUTICA. This factor distinguishes the appearance of these marks from Martanna's GET NAUTI Mark, in that Martanna's mark does not incorporate the word NAUTICA and Martanna's mark begins with the word GET. Martanna's GET NAUTI Mark also has a significantly different appearance than the remaining one-word mark of Opposer, NAUTEX. NAUTEX is one word while Martanna's mark consists of two words, again the first of which is GET. See Presto Products, Inc. v. Nice-Pak Products, Inc., 1988 TTAB LEXIS 60, at *8, 9 U.S.P.Q.2d (BNA) 1895 (T.T.A.B. 1988) (“[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered.”). Moreover, NAUTEX and NAUTI are very different words.

The appearance of Opposer's Marks further differ from the appearance of the GET NAUTI Mark in that none of Opposer's Marks include the word NAUTI, used either independently (as used in Martanna's mark), or as a prefix or suffix to another word. For example, in the Opposer's mark NAUTICAKIDS, the prefix is NAUTICA, not NAUTI. To decipher the NAUTICAKIDS marks differently would nonsensically suggest that NAUTI is the prefix to a word CAKIDS. Analyzing the construction of NAUTICAKIDS in this tortured manner is counterintuitive and not proper. Cf. Massey Jr. College, Inc. v. Fashion Institute of Tech., 492 F.2d 1399, 1402, 181 U.S.P.Q. (BNA) 272, 273 (C.C.P.A. 1974) (“That marks must be considered in their entireties in determining whether there is likelihood of confusion or mistake is a basic rule in comparison of marks.”). Based on these significant differences in

appearance, it is highly unlikely that consumers will mistakenly believe that goods sold under the GET NAUTI mark is an expansion of Opposer's Marks.

- ii. Martanna's GET NAUTI Mark is dissimilar in sound from each of Opposer's Marks.

Martanna's GET NAUTI Mark begins with the word GET, while all of Opposer's Marks begin with the word NAUTICA or the word NAUTEX. Consequently, when pronounced, the GET NAUTI Mark sounds significantly different than any of Opposer's Marks.

Further, the word NAUTI in Martanna's GET NAUTI Mark is pronounced differently than the letters N-A-U-T-I that are contained in 43 of the 44 of Opposer's Marks. The GET NAUTI Mark is pronounced "get naughty". (See the Response at ¶ II(B)(1) in which Martanna explains that the word NAUTI, as used in its GET NAUTI Mark, has the meaning "naughty"). The letter "I" in the word NAUTI is pronounced as it is in the word "naughty", as a long "E" sound. Id. In contrast, of the 43 of Opposer's Marks that include the letters N-A-U-T-I, the letter "I" is pronounced as a short "i" or schwa sound in all of these 43 marks. The difference in sound, therefore, between the GET NAUTI Mark and each of Opposer's Marks is substantial.

- iii. Martanna's GET NAUTI Mark is dissimilar in connotation and commercial impression from each of Opposer's Marks.

The differences in appearance and sound between the GET NAUTI Mark and Opposer's Marks that are discussed above also contribute to the meaning or connotation, and to the commercial impressions, conveyed by the GET NAUTI Mark as opposed to Opposer's Marks. The GET NAUTI Mark is structured as an imperative sentence made up of a verb, GET, and an adjective, NAUTI. The understood subject of the sentence is "you". The word NAUTI is intended to be a fanciful spelling of the word "naughty". (See the Response at ¶ II(B)(1) in which Martanna explains that the word NAUTI, as used in its GET NAUTI mark, has the

meaning “naughty”). When viewed alone, the word NAUTI might not immediately convey the impression of an alternate spelling of the word “naughty”. Because the word NAUTI follows the imperative verb GET in Martanna’s mark, however, NAUTI is understood and pronounced as “naughty”. Thus, purchasers will recognize GET NAUTI as a play on “Get naughty!”. The impression conveyed will be one of a lighthearted, imperative sentence such as “Get ready!”, “Get happy!” or “Get funky!”. Cf., Lever Bros. Co. v. Barcolene Co., 59 C.C.P.A. 1162, 1164, 463 F.2d 1107, 1108 – 09 (C.C.P.A. 1972) (affirming the Board’s decision that held that the opposer’s mark ALL and the applicant’s mark ALL CLEAR, as applied to similar goods, were not so similar as to be likely to cause confusion. The commercial impression of the applicant’s mark ALL CLEAR was derived from the mark as a whole, not from its component parts, which purchasers would recognize as a play on the expression “all clear!”).

Conversely, none of Opposer’s Marks contain a verb, none of Opposer’s Marks are structured as a sentence, and none of Opposer’s Marks, therefore, are structured as an imperative sentence directed toward the consumer, “you” like Martanna’s GET NAUTI Mark. Moreover, none of Opposer’s Marks convey a connotation similar to the “get naughty!” connotation of Martanna’s Mark. In fact, Opposer advised the PTO in the context of its registration of the mark NAUTICA that “THE ENGLISH TRANSLATION OF THE WORD ‘NAUTICA’ IN THE MARK IS ‘NAUTICAL’.” (See Registration No.1464663. A copy of the registration certificate for this mark is attached hereto as Exhibit D). This admission by Opposer is significant. Indeed, the commercial impression conveyed by Opposer’s Marks, all of which except one contain the word NAUTICA, is of nautical or water-related products. This commercial impression of a nautical theme is underscored in those of Opposer’s Marks that also include other water-related words, such as NAUTICA BEACH, NAUTICA BLUE and NAUTICA VOYAGE (see

Opposition at ¶ 5). Martanna's Mark and Opposer's Marks have different connotations and convey different commercial impressions.

Accordingly, it is apparent that Martanna's GET NAUTI Mark, when used on or in connection with the goods identified in Martanna's Application, is not likely to confuse or cause consumers to be mistaken or deceived with respect to Opposer's Marks.

B. Goods Described in Martanna's Application are Dissimilar from Goods Associated with Opposer's Marks

While the first *DuPont* factor is dispositive in this matter, the second *DuPont* factor also supports a finding that confusion between Martanna's GET NAUTI Mark and Opposer's Marks is not likely. Specifically, Martanna's GET NAUTI Mark is associated with goods classified in International Classes 3 and 25. 23 of the 44 of Opposer's Marks are not associated with either of these International Classes of goods. (See Notice of Opposition at pp. 2 – 15). Consequently, any likelihood of confusion is significantly diminished because Martanna's GET NAUTI Mark will be used in connection with goods that are significantly different than those with which 23 of Opposer's Marks are identified.

III. SUMMARY JUDGMENT SHOULD BE GRANTED IN FAVOR OF MARTANNA BECAUSE OPPOSER CANNOT PREVAIL ON ITS DILUTION CLAIM

Opposer alleges that its marks "have become distinctive and famous, long prior to any date which may be claimed by Applicant", and that registration of Martanna's GET NAUTI Mark "will cause the dilution of the distinctive quality of Opposer's Marks, all to Opposer's irreparable damage." (Opposition at ¶¶ 17 – 18). Assuming for purposes of this Motion that Opposer could demonstrate the fame of its marks, Martanna is nonetheless entitled to summary judgment on Opposer's trademark dilution claim.

The relevant portion of the Trademark Dilution Revision Act of 2006 (the “Dilution Act”) provides that:

the owner of a famous mark that is distinctive . . . shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring . . . of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

15 U.S.C. §1125(c)(1). While a finding of remediable dilution does not require a finding of actual or likely confusion, the Dilution Act makes clear that similarity between the famous mark and the alleged diluting mark is required.

The Dilution Act defines “dilution by blurring” as “association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark.” 15 U.S.C. §1125(c)(2)(B). In determining whether a mark or trade name is likely to cause dilution by blurring, the Dilution Act directs the Board to consider “all relevant factors,” including the “degree of similarity between the mark or trade name and the famous mark.” 15 U.S.C. §1125(c)(2)(B)(i). And, with regard to the degree of similarity required to demonstrate likelihood of dilution, “the marks must at least be similar enough that a substantial segment of the target group of customers sees the two marks as essentially the same.” 4 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, § 24:117, at p. 24-329 (4th Ed., 2007) (citation omitted). Further, “without identity or near identity, the injury of blurring is unlikely.” Id.

Martanna’s GET NAUTI Mark is not identical to any of Opposer’s Marks. This is demonstrated by Martanna’s likelihood of confusion analysis under the first *DuPont* factor presented above and is incorporated herein. This analysis sets forth several bases on which Martanna’s GET NAUTI Mark and Opposer’s Marks are substantially dissimilar – far from

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

NAUTICA APPAREL, INC.,)	
)	
Opposer,	)	Opposition No. 91177192
)	
v.	)	Mark: GET NAUTI
)	
MARTANNA L.C.,	)	Serial No. 78610037
)	
Applicant.	)	Filed: April 15, 2005

CERTIFICATE OF SERVICE

I hereby certify that, on this 20th day of March, 2008, a true and correct copy of Applicant Martanna L.C.' Motion for Summary Judgment and Memorandum in Support Thereof, and proposed Order were served, via first-class United States mail postage prepaid, upon:

Stephen L. Baker, Esq.
Neil Friedman, Esq.
Baker and Rannells PA
575 Route 28
Suite 102
Raritan, NJ 08869
Counsel for Opposer Nautica Apparel, Inc.

/s/
Howard G. Slavit

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

NAUTICA APPAREL, INC.,)	
)	
Opposer,	)	Opposition No. 91177192
)	
v.	)	Mark: GET NAUTI
)	
MARTANNA L.C.,	)	Serial No. 78610037
)	
Applicant.	)	Filed: April 15, 2005

ORDER

This matter is before the court on Applicant Martanna L.C.’s Motion for Summary Judgment and Memorandum in Support Thereof (the “Motion”).

Upon consideration of the Motion, and opposer Nautica Apparel, Inc.’s opposition thereto,

It appearing to the Trademark Trial and Appeal Board that good cause exists to do so, it is

ORDERED that Martanna L.C.’s Motion is granted; it is

FURTHER ORDERED that this matter is hereby dismissed with prejudice.

Entered on this ____ day of _____, 2008.

Trademark Trial and Appeal Board

**APPLICANT'S
EXHIBIT A**

NAUTICA APPAREL, INC. V. MARTANNA L.C. (Opposition No. 91177192)

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-19 16:16:47 ET

Serial Number: 78275303 Assignment Information Trademark Document Retrieval

Registration Number: 3272760

Mark (words only): NAUTICA GOLF

Standard Character claim: No

Current Status: Registered.

Date of Status: 2007-07-31

Filing Date: 2003-07-17

Transformed into a National Application: No

Registration Date: 2007-07-31

Register: Principal

Law Office Assigned: LAW OFFICE 101

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2008-03-14

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nautica Apparel, Inc.

Address:

Nautica Apparel, Inc.
40 West 57th Street
New York, NY 10019
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

Phone Number: 212-887-8125

Fax Number: 212-841-7193



GOODS AND/OR SERVICES

International Class: 025**Class Status:** Active

Men's, namely, shirts, tops, sweaters, jackets, pants, bottoms, hats and caps; shorts, rainwear, trousers, outer shirts namely, polo, and sports shirts, collars

Basis: 1(a)**First Use Date:** 2006-01-25**First Use in Commerce Date:** 2006-01-25

ADDITIONAL INFORMATION

Disclaimer: "GOLF"**Translation:** The English translation of "NAUTICA" is "NAUTICAL".

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-03-14 - Assigned To Paralegal

2008-01-03 - Section 7 amendment filed

2008-01-03 - FAX RECEIVED

2007-07-31 - Registered - Principal Register

2007-06-27 - Law Office Registration Review Completed

2007-06-25 - Assigned To LIE

2007-05-24 - Allowed for Registration - Principal Register (SOU accepted)

2007-03-15 - Statement of use processing complete

2007-03-15 - Amendment to Use filed

2007-03-15 - TEAS Statement of Use Received

2007-03-14 - Extension 5 granted

2007-01-10 - Extension 5 filed

2007-01-10 - TEAS Extension Received

2006-08-22 - Extension 4 granted
2006-07-20 - Extension 4 filed
2006-07-20 - TEAS Extension Received
2006-06-08 - Assigned To Examiner
2006-02-07 - Extension 3 granted
2006-01-19 - Extension 3 filed
2006-01-19 - TEAS Extension Received
2005-08-01 - Extension 2 granted
2005-07-20 - Extension 2 filed
2005-07-26 - Extension Received With TEAS Petition
2005-07-26 - Petition To Revive-Granted
2005-07-26 - TEAS Petition To Revive Received
2005-02-02 - Extension 1 granted
2005-01-14 - Extension 1 filed
2005-01-14 - TEAS Extension Received
2004-07-20 - Notice of allowance - mailed
2004-04-27 - Published for opposition
2004-04-07 - Notice of publication
2004-02-19 - Approved for Pub - Principal Register (Initial exam)
2004-02-19 - EXAMINERS AMENDMENT E-MAILED
2004-01-28 - Non-final action e-mailed
2004-01-25 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record
Lisa A. Whitney

Correspondent

Lisa A. Whitney
NAUTICA
40 W 57TH ST
NEW YORK NY 10019-4005
Phone Number: 212-887-8125
Fax Number: 212-841-7193

**APPLICANT'S
EXHIBIT B**

NAUTICA APPAREL, INC. V. MARTANNA L.C. (Opposition No. 91177192)

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-19 16:26:08 ET

Serial Number: 78275470 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark (words only): NAUTICA GOLF

Standard Character claim: No

Current Status: Abandoned: No Statement of Use filed after Notice of Allowance was issued.

Date of Status: 2005-01-14

Filing Date: 2003-07-17

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 114

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 700 -Intent To Use Section

Date In Location: 2005-05-09

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nautica Apparel, Inc.

Address:

Nautica Apparel, Inc.
40 West 57th Street
New York, NY 10019
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

Phone Number: 212-887-8125

Fax Number: 212-841-7193

APPLICANT'S
EXHIBIT B
NAUTICA APPAREL, INC. V.
MARTANNA L.C.
(OPPOSITION No. 91177192)

GOODS AND/OR SERVICES

International Class: 018**Class Status:** Active

Handbags, tote bags, backpacks, luggage, wallets, purses, key cases, brief cases, duffel bags, all-purpose sport bags, business card cases, credit card cases, briefcase-type portfolios, billfolds, attaché cases, key cases, passport holders, suit bags, waist and fanny packs; trunks, travel bags, hat boxes for travel, leather key chains, luggage tags, overnight bags and cases, cosmetic, toiletry and vanity cases sold empty; umbrellas; canes, and walking sticks

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Disclaimer: "GOLF"**Translation:** The translation of "NAUTICA" is "NAUTICAL".**Prior Registration Number(s):**

2474154

2491501

2731466

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2005-05-09 - Abandonment Notice Mailed - No Use Statement Filed

2005-05-09 - Abandonment - No use statement filed

2005-01-14 - Late filed extension request

2005-01-14 - TEAS Extension Received

2004-07-13 - Notice of allowance - mailed

2004-04-20 - Published for opposition

2004-03-31 - Notice of publication

2004-03-31 - Notice of publication

2004-02-02 - Approved for Pub - Principal Register (Initial exam)

2004-02-02 - Examiners amendment e-mailed

2004-01-25 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Lisa A. Whitney

Correspondent

Lisa A. Whitney

Nautica Apparel, Inc.

40 West 57th Street

New York, NY 10019

Phone Number: 212-887-8125

Fax Number: 212-841-7193

**APPLICANT'S
EXHIBIT C**

NAUTICA APPAREL, INC. V. MARTANNA L.C. (Opposition No. 91177192)

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-19 15:45:01 ET

Serial Number: 78713715 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

NAUTICA NAVY

(words only): NAUTICA NAVY

Standard Character claim: Yes

Current Status: A request for the third extension of time to file a statement of use has been granted.

Date of Status: 2008-02-01

Filing Date: 2005-09-15

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: Yes

The Notice of Allowance Date is: 2006-06-20

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 117

Attorney Assigned:
MAHONEY PAULA M

Current Location: 700 -Intent To Use Section

Date In Location: 2008-01-30

**APPLICANT'S
EXHIBIT C
NAUTICA APPAREL, INC. V.
MARTANNA L.C.
(OPPOSITION No. 91177192)**

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nautica Apparel, Inc.**Address:**

Nautica Apparel, Inc.
40 West 57th Street
New York, NY 10019
United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Delaware**Phone Number:** 212-887-8125**Fax Number:** 212841-7193

GOODS AND/OR SERVICES**International Class:** 025**Class Status:** Active

Bathing suits; Bathing suits for men; Bathing trunks; Bathrobes; Blouses; Coats; Gloves; Hats; Jackets;
Jeans; Men's suits, women's suits; Pajamas; Pants; Scarves; Shirts; Shoes; Shorts

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION**Translation:** The English translation of the foreign wording in the mark is as follows: NAUTICAL.**Prior Registration Number(s):**

1464663

1580007

2731466

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-02-01 - Extension 3 granted

2007-12-20 - Extension 3 filed

2008-01-29 - Extension Received With TEAS Petition

2008-01-29 - Petition To Revive-Granted

2008-01-29 - TEAS Petition To Revive Received
2007-08-27 - Extension 2 granted
2007-06-12 - Extension 2 filed
2007-07-11 - Extension Received With TEAS Petition
2007-07-11 - TEAS Petition To Revive Received
2007-06-12 - TEAS Extension Received
2007-01-24 - Extension 1 granted
2006-12-20 - Extension 1 filed
2007-01-10 - Extension Received With TEAS Petition
2007-01-10 - Petition To Revive-Granted
2007-01-10 - TEAS Petition To Revive Received
2006-06-20 - Notice of allowance - mailed
2006-03-28 - Published for opposition
2006-03-08 - Notice of publication
2006-02-09 - Law Office Publication Review Completed
2006-02-03 - Assigned To LIE
2006-01-21 - Approved for Pub - Principal Register (Initial exam)
2006-01-21 - EXAMINERS AMENDMENT E-MAILED
2006-01-21 - Examiners Amendment -Written
2005-12-30 - Non-final action e-mailed
2005-12-30 - Non-Final Action Written
2005-12-29 - Assigned To Examiner
2005-09-23 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Lisa A. Whitney

Correspondent

Lisa A. Whitney

NAUTICA APPAREL, INC.

40 W 57TH ST FL 3

NEW YORK NY 10019-4005

Phone Number: 212-887-8125

Fax Number: 212-841-7193

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-19 15:45:55 ET

Serial Number: 78763730 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

NAUTICA

(words only): NAUTICA

Standard Character claim: Yes

Current Status: A request for the third extension of time to file a statement of use has been granted.

Date of Status: 2008-01-08

Filing Date: 2005-11-30

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: Yes

The Notice of Allowance Date is: 2006-06-13

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 117

Attorney Assigned:
MAHONEY PAULA M

Current Location: 700 -Intent To Use Section

Date In Location: 2008-01-04

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nautica Apparel, Inc.**Address:**

Nautica Apparel, Inc.
40 West 57th Street
New York, NY 10019
United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Delaware**Phone Number:** 212-887-8125**Fax Number:** 212-841-7193

GOODS AND/OR SERVICES**International Class:** 028**Class Status:** Active

Plush toys; Stuffed toy animals; Toy vehicles

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION**Translation:** The English translation of the word NAUTICA in the mark is NAUTICAL.**Prior Registration Number(s):**

1464663

1580007

2731466

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-01-08 - Extension 3 granted

2007-12-12 - Extension 3 filed

2007-12-12 - TEAS Extension Received

2007-07-06 - Extension 2 granted

2007-03-27 - Extension 2 filed
2007-03-27 - TEAS Extension Received
2007-01-13 - Extension 1 granted
2006-12-13 - Extension 1 filed
2007-01-10 - Extension Received With TEAS Petition
2007-01-10 - Petition To Revive-Granted
2007-01-10 - TEAS Petition To Revive Received
2006-06-13 - Notice of allowance - mailed
2006-03-21 - Published for opposition
2006-03-01 - Notice of publication
2006-02-07 - Law Office Publication Review Completed
2006-02-03 - Assigned To LIE
2006-01-21 - Approved for Pub - Principal Register (Initial exam)
2006-01-21 - EXAMINERS AMENDMENT E-MAILED
2006-01-21 - Examiners Amendment -Written
2005-12-30 - Non-final action e-mailed
2005-12-30 - Non-Final Action Written
2005-12-29 - Assigned To Examiner
2005-12-07 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Lisa A. Whitney

Correspondent

Lisa A. Whitney
NAUTICA APPAREL, INC.
40 W 57TH ST FL 3
NEW YORK NY 10019-4005
Phone Number: 212-887-8125
Fax Number: 212-841-7193

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-19 15:46:37 ET

Serial Number: 78912365 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

NAUTICA ISLAND

(words only): NAUTICA ISLAND

Standard Character claim: Yes

Current Status: Opposition period completed, a Notice of Allowance has been issued.

Date of Status: 2008-03-11

Filing Date: 2006-06-20

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: No

The Notice of Allowance Date is: 2008-03-11

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 111

Attorney Assigned:
BELLO ZACHARY R

Current Location: 700 -Intent To Use Section

Date In Location: 2008-03-11

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nautica Apparel, Inc.

Address:

Nautica Apparel, Inc.
40 West 57th Street
New York, NY 10019
United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Delaware**Phone Number:** 212-887-8125**Fax Number:** 212-841-7193

GOODS AND/OR SERVICES**International Class:** 025**Class Status:** Active

Blazers; Caps; Coats; Hats; Jackets; Pants; Shirts; Shorts; Sweaters; Swimsuits; T-shirts

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION**Translation:** The English translation of NAUTICA is NAUTICAL.**Prior Registration Number(s):**

2987139

2993023

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-03-11 - Notice of allowance - mailed

2007-12-18 - Published for opposition

2007-11-28 - Notice of publication

2007-11-13 - Law Office Publication Review Completed

2007-10-30 - Approved for Pub - Principal Register (Initial exam)

2007-10-30 - Examiner's Amendment Entered
2007-10-30 - Notification Of Examiners Amendment E-Mailed
2007-10-30 - EXAMINERS AMENDMENT E-MAILED
2007-10-30 - Examiners Amendment -Written
2007-03-29 - Combined Examiner's Amendment/Priority Action Entered
2007-03-27 - Assigned To LIE
2007-03-27 - Examiner's Amendment/Priority Action E-Mailed
2007-03-27 - Examiners Amendment And/Or Priority Action - Completed
2006-11-22 - Non-final action e-mailed
2006-11-22 - Non-Final Action Written
2006-11-22 - Removed From TEAS Plus
2006-11-21 - Assigned To Examiner
2006-06-27 - Notice Of Pseudo Mark Mailed
2006-06-26 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Lisa A. Whitney

Correspondent

LISA A. WHITNEY
NAUTICA APPAREL, INC.
40 W 57TH ST
NEW YORK, NY 10019-4001
Phone Number: 212-887-8125
Fax Number: 212-841-7193

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-19 15:47:30 ET

Serial Number: 78963691 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

NAUTICA BERMUDA BLUE

(words only): NAUTICA BERMUDA BLUE

Standard Character claim: Yes

Current Status: Opposition period completed, a Notice of Allowance has been issued.

Date of Status: 2008-03-11

Filing Date: 2006-08-30

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: No

The Notice of Allowance Date is: 2008-03-11

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 111

Attorney Assigned:
BELLO ZACHARY R

Current Location: 700 -Intent To Use Section

Date In Location: 2008-03-11

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nautica Apparel, Inc.

Address:

Nautica Apparel, Inc.
40 West 57th Street
New York, NY 10019
United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Delaware**Phone Number:** 212-887-8125**Fax Number:** 212-841-7193

GOODS AND/OR SERVICES

International Class: 003**Class Status:** Active

Body lotions; Body powder; Body spray used as a personal deodorant and as fragrance; Perfumery;
Soaps for personal use

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Translation: The English translation of NAUTICA is NAUTICAL.**Prior Registration Number(s):**

2987139

2993023

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-03-11 - Notice of allowance - mailed

2007-12-18 - Published for opposition

2007-11-28 - Notice of publication

2007-11-13 - Law Office Publication Review Completed

2007-10-30 - Approved for Pub - Principal Register (Initial exam)
2007-10-30 - Examiner's Amendment Entered
2007-10-30 - Notification Of Examiners Amendment E-Mailed
2007-10-30 - EXAMINERS AMENDMENT E-MAILED
2007-10-30 - Examiners Amendment -Written
2007-03-29 - Combined Examiner's Amendment/Priority Action Entered
2007-03-27 - Assigned To LIE
2007-03-27 - Examiner's Amendment/Priority Action E-Mailed
2007-03-27 - Examiners Amendment And/Or Priority Action - Completed
2006-11-22 - Non-final action e-mailed
2006-11-22 - Non-Final Action Written
2006-11-22 - Removed From TEAS Plus
2006-11-21 - Assigned To Examiner
2006-09-06 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Lisa A. Whitney

Correspondent

LISA A. WHITNEY
NAUTICA APPAREL, INC.
40 W 57TH ST
NEW YORK, NY 10019-4001
Phone Number: 212-887-8125
Fax Number: 212-841-7193

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-19 15:48:57 ET

Serial Number: 77081223 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

NAUTICARE

(words only): NAUTICARE

Standard Character claim: Yes

Current Status: Opposition period completed, a Notice of Allowance has been issued.

Date of Status: 2008-02-19

Filing Date: 2007-01-11

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: Yes

The Notice of Allowance Date is: 2008-02-19

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 102

Attorney Assigned:
CRAWFORD MARY E

Current Location: 700 -Intent To Use Section

Date In Location: 2008-02-19

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nautica Apparel, Inc.

Address:

Nautica Apparel, Inc.
40 West 57th Street
New York, NY 10019
United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Delaware**Phone Number:** 212-887-8125**Fax Number:** 212-841-7193

GOODS AND/OR SERVICES

International Class: 025**Class Status:** Active

Dress shirts; Jackets; Men's suits; Neckwear; Overcoats; Pants

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-02-19 - Notice of allowance - mailed

2008-01-04 - Extension Of Time To Oppose Process - Terminated

2007-09-21 - PAPER RECEIVED

2007-09-19 - Extension Of Time To Oppose Received

2007-08-21 - Published for opposition

2007-08-01 - Notice of publication

2007-05-17 - Law Office Publication Review Completed

2007-05-17 - Assigned To LIE

2007-05-01 - Approved for Pub - Principal Register (Initial exam)

2007-05-01 - Assigned To Examiner

2007-01-18 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Lisa A. Whitney

Correspondent

LISA A. WHITNEY

NAUTICA APPAREL, INC.

40 W 57TH ST

NEW YORK, NY 10019-4001

Phone Number: 212-887-8125

Fax Number: 212-841-7193

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-19 15:48:22 ET

Serial Number: 77081234 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

NAUTICA OPTIONS

(words only): NAUTICA OPTIONS

Standard Character claim: Yes

Current Status: Application was revived after being abandoned, will be forwarded for further examination.

Date of Status: 2007-12-12

Filing Date: 2007-01-11

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: No

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 102

Attorney Assigned:
CRAWFORD MARY E

Current Location: 700 -Intent To Use Section

Date In Location: 2007-11-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nautica Apparel, Inc.

Address:

Nautica Apparel, Inc.
40 West 57th Street
New York, NY 10019
United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Delaware**Phone Number:** 212-887-8125**Fax Number:** 212-841-7193

GOODS AND/OR SERVICES

International Class: 025**Class Status:** Partially Paid

Dress shirts; Jackets; Men's suits; Neckwear; Overcoats; Pants

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-12-12 - TEAS Response to Office Action Received

2007-12-12 - Petition To Revive-Granted

2007-12-12 - TEAS Petition To Revive Received

2007-11-28 - Abandonment Notice Mailed - Failure To Respond

2007-11-27 - Abandonment - Failure To Respond Or Late Response

2007-05-01 - Non-final action e-mailed

2007-05-01 - Non-Final Action Written

2007-05-01 - Removed From TEAS Plus

2007-05-01 - Assigned To Examiner

2007-01-18 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Lisa A. Whitney

Correspondent

LISA A. WHITNEY

NAUTICA APPAREL, INC.

40 W 57TH ST

NEW YORK, NY 10019-4001

Phone Number: 212-887-8125

Fax Number: 212-841-7193

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-19 15:49:34 ET

Serial Number: 77085720 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

NAUTICA

(words only): NAUTICA

Standard Character claim: Yes

Current Status: Application was revived after being abandoned, will be forwarded for further examination.

Date of Status: 2007-12-07

Filing Date: 2007-01-18

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: No

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 102

Attorney Assigned:
CRAWFORD MARY E

Current Location: 700 -Intent To Use Section

Date In Location: 2007-11-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nautica Apparel, Inc.

Address:

Nautica Apparel, Inc.
40 West 57th Street
New York, NY 10019
United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Delaware**Phone Number:** 212-887-8125**Fax Number:** 212-841-7193

GOODS AND/OR SERVICES

International Class: 025**Class Status:** Partially Paid

Wet suit gloves; Wet suits; Wet suits for water-skiing and sub-aqua

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-12-07 - TEAS Response to Office Action Received

2007-12-07 - Petition To Revive-Granted

2007-12-07 - TEAS Petition To Revive Received

2007-11-28 - Abandonment Notice Mailed - Failure To Respond

2007-11-27 - Abandonment - Failure To Respond Or Late Response

2007-05-01 - Non-final action e-mailed

2007-05-01 - Non-Final Action Written

2007-05-01 - Removed From TEAS Plus

2007-05-01 - Assigned To Examiner

2007-01-23 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Lisa A. Whitney

Correspondent

LISA A. WHITNEY

NAUTICA APPAREL, INC.

40 W 57TH ST

NEW YORK, NY 10019-4001

Phone Number: 212-887-8125

Fax Number: 212-841-7193

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-19 15:49:53 ET

Serial Number: 77085766 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

NAUTICA

(words only): NAUTICA

Standard Character claim: Yes

Current Status: Application was revived after being abandoned, will be forwarded for further examination.

Date of Status: 2007-12-07

Filing Date: 2007-01-18

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: No

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 102

Attorney Assigned:
CRAWFORD MARY E

Current Location: 700 -Intent To Use Section

Date In Location: 2007-11-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nautica Apparel, Inc.

Address:

Nautica Apparel, Inc.
40 West 57th Street
New York, NY 10019
United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Delaware**Phone Number:** 212-887-8125**Fax Number:** 212-841-7193

GOODS AND/OR SERVICES

International Class: 028**Class Status:** Partially Paid

Floating recreational lounge chairs; Floats for recreational use, namely, ARM FLOATS, FOAM FLOATS, SWIM FLOATS; Inflatable float mattresses or pads for recreational use; Inflatable inner tubes for aquatic recreational use; Inflatable mattresses for recreational use; Inflatable ride-on toys; Kick board flotation devices for recreational use; Paddle boards; Swim boards for recreational use; Swim fins; Swim floats for recreational use; Swimming aids, namely POOL RINGS, ARM FLOATS FOR RECREATIONAL USE; Trampolines

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)**International Class:** 030**Class Status:** Partially Paid

Floating islands

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-12-07 - TEAS Response to Office Action Received

2007-12-07 - Petition To Revive-Granted
2007-12-07 - TEAS Petition To Revive Received
2007-11-28 - Abandonment Notice Mailed - Failure To Respond
2007-11-27 - Abandonment - Failure To Respond Or Late Response
2007-05-01 - Non-final action e-mailed
2007-05-01 - Non-Final Action Written
2007-05-01 - Removed From TEAS Plus
2007-05-01 - Assigned To Examiner
2007-01-23 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Lisa A. Whitney

Correspondent

LISA A. WHITNEY
NAUTICA APPAREL, INC.
40 W 57TH ST
NEW YORK, NY 10019-4001
Phone Number: 212-887-8125
Fax Number: 212-841-7193

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-19 16:13:17 ET

Serial Number: 77085787 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

NAUTICA

(words only): NAUTICA

Standard Character claim: Yes

Current Status: Application was revived after being abandoned, will be forwarded for further examination.

Date of Status: 2007-12-07

Filing Date: 2007-01-18

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: No

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 102

Attorney Assigned:
CRAWFORD MARY E

Current Location: 700 -Intent To Use Section

Date In Location: 2007-11-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nautica Apparel, Inc.

Address:

Nautica Apparel, Inc.
40 West 57th Street
New York, NY 10019
United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Delaware**Phone Number:** 212-887-8125**Fax Number:** 212-841-7193

GOODS AND/OR SERVICES

International Class: 009**Class Status:** Partially Paid

Flotation vests; Life jackets; Life preservers; Swim goggles; Swim masks

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-12-07 - TEAS Response to Office Action Received

2007-12-07 - Petition To Revive-Granted

2007-12-07 - TEAS Petition To Revive Received

2007-11-28 - Abandonment Notice Mailed - Failure To Respond

2007-11-27 - Abandonment - Failure To Respond Or Late Response

2007-05-01 - Non-final action e-mailed

2007-05-01 - Non-Final Action Written

2007-05-01 - Removed From TEAS Plus

2007-05-01 - Restore To TEAS Plus

2007-05-01 - Removed From TEAS Plus

2007-05-01 - Assigned To Examiner

2007-01-23 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Lisa A. Whitney

Correspondent

LISA A. WHITNEY

NAUTICA APPAREL, INC.

40 W 57TH ST

NEW YORK, NY 10019-4001

Phone Number: 212-887-8125

Fax Number: 212-841-7193

**APPLICANT'S
EXHIBIT D**

NAUTICA APPAREL, INC. V. MARTANNA L.C. (Opposition No. 91177192)

Int. Cl.: 25

Prior U.S. Cl.: 39

Reg. No. 1,464,663

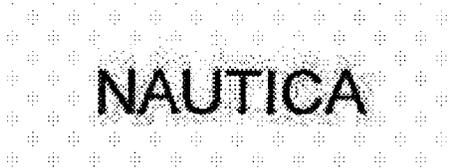
United States Patent and Trademark Office

Registered Nov. 10, 1987

Amended

OG Date Feb. 20, 2007

**TRADEMARK
PRINCIPAL REGISTER**



NAUTICA APPAREL, INC. (DELAWARE
CORPORATION)
40 WEST 57TH STREET
NEW YORK, NY 10019

THE MARK CONSISTS OF STAND-
DARD CHARACTERS WITHOUT CLAIM
TO ANY PARTICULAR FONT, STYLE,
SIZE, OR COLOR.

THE ENGLISH TRANSLATION OF
THE WORD "NAUTICA" IN THE MARK
IS "NAUTICAL".

FOR: HOSIERY, SHOES, UNDER-
SHIRTS, UNDERSHORTS, SHIRTS,
BLOUSES, TROUSERS, JACKETS, PANTS,
COATS, SUITS, BATHING SUITS, BATH-
ROBES, SLIPPERS AND SHORTS, IN
CLASS 25 (U.S. CL. 39).

FIRST USE 5-3-1985; IN COMMERCE
5-3-1985.

SER. NO. 73-631,447, FILED 11-20-1986.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Feb. 20, 2007.*

DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE

APPLICANT'S
EXHIBIT D
NAUTICA APPAREL, INC. V.
MARTANNA L.C.
(OPPOSITION No. 91177192)