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

Proceeding	91180485
Party	Plaintiff Swat.Fame, inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SWAT.FAME, INC.,

Opposer,

vs.

MELVINA GOREN,

Applicant.

OPPOSITION NO. 91180485

SERIAL NO. 76/652351

**OPPOSER'S MOTION TO (1) STRIKE ANSWER IN ITS ENTIRETY AND ENTER
DEFAULT, OR IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT
AND TO STRIKE IMPERTINENT ALLEGATIONS; AND
(2) SET ASIDE ORDER GRANTING "REQUEST TO EXTEND TIME"**

I. INTRODUCTION

This motion is necessitated by (1) Applicant Melvina Goren's ("Applicant") filing of a late Answer that is patently defective and that violates the TTAB's fundamental pleading rules; and (2) her failure to serve a motion that has resulted in an order that should now be set aside.

Applicant first violated the TTAB's rules by filing her Answer late. Answers that are filed late need not be considered and a default should be granted.

Moreover, the Answer that was filed violates the TTAB's rules in several material respects. Literally every single paragraph is defective because it either fails to admit or deny any of the allegations, simply objects to the allegations without more, or includes extensive argument that is devoid of any evidentiary facts and is entirely irrelevant and improper.

Applicant apparently sought relief for her failure to timely file this defective Answer by filing a "Request for Extension of Time to Respond," which was granted as "conceded" because it was "unopposed." However, that order should now be vacated because Applicant once again violated the TTAB's rules by failing to serve the Request upon Opposer Swat.Fame, Inc. ("Opposer"). The Request should therefore never have even been considered because Applicant failed to give proper notice.

Indeed, even if Applicant had given notice, the "Request to Extend Time" (which is more accurately a "Motion to Reopen Time" because it was filed after the deadline to answer) should still have been denied on the merits. Applicant's supporting "brief" is a mere twenty one (21) words, and fails to offer the specific facts required to support a finding of excusable neglect.

Either way, the late Answer should not be considered and entry of default is warranted. At the very least, Applicant should be required to amend her Answer to strike out the impertinent argument and offer a more definite statement of her ambiguous responses so that the

pleadings are "at issue," comprehensible, and susceptible to meaningful discovery.

II. STATEMENT OF FACTS

A. Application and Opposition History

Opposer has been engaged in the manufacture and sale of a wide range of apparel in commerce in the United States for many years. On July 27, 2005, a date prior to December 22, 2005 (Applicant's filing date), Opposer applied for the trademark UNDERGROUND SOUL, which is also sometimes referred to as SOUL UNDERGROUND, for a number of apparel goods. Following two separate Requests to Divide, two separate registrations for the mark UNDERGROUND SOUL have issued to Opposer, both with a priority constructive use date prior to Applicant's filing date.

On December 22, 2005, Applicant filed trademark application S.N. 76/652351 to register the mark SOUL STAR UNDERGROUND for several items of apparel (the application herein opposed). On August 9, 2007, Opposer filed two applications to register the mark SOUL UNDERGROUND (S.N. 77/251366 and 77/251393) for a number of apparel goods. The PTO Examining Attorney has issued provisional refusals of both those applications based on Section 2(d) of the Lanham Act, citing Applicant's prior filed SOUL STAR UNDERGROUND application (the application herein opposed).

On October 31, 2007 Opposer timely filed the Notice of Opposition that initiated these proceedings. (Exh. A to the Declaration of William A. Finkelstein in support hereof ("Finkelstein Decl.")¹.) The TTAB Issued its 40 Day Notice to Answer that same day. (Exh B.)

B. Applicant Failed to Timely File an Adequate Answer

Applicant's Answer was due on December 10, 2007. However, Applicant missed the deadline and did not file her Answer until December 11, 2007. (Exhs. C, D.) The proof of

¹ All exhibits referenced herein are attached to the Finkelstein Declaration.

service filed by Applicant's attorney and TTAB confirmation of electronic filing shows the Answer was filed and served on December 11. (Exh. E, F (accompanying cover letter).)

The Answer itself failed to admit or deny any allegations, and is replete with extensive objections and argument that are inappropriate for a responsive pleading. After receiving the untimely and defective Answer, and not having been served with any motion seeking relief, Opposer reasonably awaited as a matter of course for the TTAB to issue a lateness notice and expected that an order to show cause re: entry of default would be directed to Applicant.

C. Applicant Filed, But Failed to Serve, The Purported "Request to Extend Time"

However, unbeknownst to Opposer, on the same day Applicant filed her late Answer, she also filed, but failed to serve, a so called "Request to Extend Time" to answer the Opposition (the "Request"). (Exh. G; see also Exh. H (TTAB docket report), Exh. I (electronic filing confirmation)). The Request itself should actually have been styled a "Motion to Re-Open Time" because it was filed after the deadline to answer (which compels application of the more stringent excusable neglect standard, versus the good cause standard for a request to extend).

In her mis-characterized Request, Applicant vaguely and tersely states, in the entirety and without further elaboration: "Applicant has encountered a problem while trying to submit its response online and needs additional time to submit a paper response."

Opposer first learned of the Request on January 22, 2008 when it received the TTAB's Order granting it as "conceded" because it was not opposed. (Finkelstein Decl. at ¶ 10; Exh. J.) The Request itself does not attach or include a Certificate of Service or otherwise indicate that any steps were taken to attempt service on Opposer. (Id.) There is no evidence on the TTAB docket to show that Applicant ever filed a Certificate of Service for the Request. (Exh. H.) In addition, the cover letter that accompanied the concurrently filed Answer makes no

reference to the Request. (Exh. D.)

Had Opposer been served with the Request it would have exercised its right to oppose the Request. (Finkelstein Decl. at ¶ 10.) Opposer would have sought to bring these proceedings to a prompt disposition because Applicant's application at issue has already prejudiced Opposer by serving as the basis for the PTO to issue provisional refusals of Opposer's SOUL UNDERGROUND applications. (*Id.*) Although Applicant clearly had the ability to serve a copy of the Request on, as well as directly notify, Opposer's counsel, as demonstrated by her doing precisely that with respect to the Answer, she did not. By not serving or notifying Opposer's counsel of the Request filed on the same day as the Answer, Applicant thereby deprived Opposer of an opportunity to respond, raising serious questions that need to be addressed by this Board.

III. APPLICANT'S UNTIMELY ANSWER SHOULD BE STRICKEN IN ITS ENTIRETY AND A DEFAULT SHOULD BE ENTERED

If an answer is not filed within the time prescribed by the TTAB's rules, an opposition may be decided as in a case of default. 37 C.F.R. § 2.106(a); DeLorme Publishing CO. v. Eartha's Inc., 60 USPQ 2d 1222 (TTAB 2001) (granting motion for default for failure to timely file an answer).

Applicant's Answer was simply filed late without permission, consent, or any properly noticed motion pending. As a simple matter of adherence to the TTAB's rules it should therefore not be considered at all, and a default should therefore be entered in Opposer's favor in accordance with 37 C.F.R. § 2.106(a). Applicant cannot show good cause under Rule 55(c) of the Federal Rules of Civil Procedure why a default should not be entered. Indeed, as explained in greater detail below, Applicant offers no legitimate explanation for her failure to timely file her Answer. (See Section V(B), *infra*.)

Even if Applicant's untimely Answer were not simply stricken in its entirety in accordance with the TTAB's rules and case law, it should at the least be cured of its manifest defects, present in every single paragraph, that prevent Opposer from effectively prosecuting this action.

IV. IF APPLICANT'S ANSWER IS NOT STRICKEN IN ITS ENTIRETY, ITS EQUIVOCAL RESPONSES SHOULD BE MADE MORE DEFINITE AND ITS IMPROPER ARGUMENT SHOULD BE STRICKEN

An answer must admit the averments upon which the opposer relies, deny them, or state the applicant is without sufficient knowledge or information to form a belief as to the truth of an averment (which has the effect of a denial). 37 C.F.R. §§ 2.106(b)(1) and 2.114(b)(1); Fed.R.Civ.P. 8(b)(1)(B); 37 C.F.R. § 2.116(a) (making the FRCP applicable to TTAB proceedings); Hewlett-Packard Co. v. Olympus Corp., 18 USPQ 2d 1710, 1713 (Fed. Cir. 1991); Lipton Indus., Inc. v. Ralston Purina Co., 213 USPQ 185 (CCPA 1982).

An answer is also not the place for argument concerning the merits of the opposer's averments. Turner Entertainment Co. v. Ken Nelson, 38 USPQ2d 1942 (TTAB 1996) (TTAB should not have to interpret an answer that is argumentative and non-responsive); Natl. Football League v. Jasper Alliance Corp., 16 USPQ2d 1212 (TTAB 1990) (answer should not be more in the nature of an argument than an answer); Thrifty Corp. v. Bomax Entprs., 228 USPQ 62, 63 (TTAB 1985).

Every single paragraph in Applicant's Answer is defective. In many of the paragraphs, Applicant ambiguously states, without more, that "Applicant neither accepts nor denies Paragraph [] of the Opposition", which is simply unacceptable under the Federal Rules of Civil Procedure and the TTAB's Rules. (Answer at ¶¶ 2, 4-6, 8.) Astoundingly, Applicant even fails to admit or deny in response to allegations as simple as "Applicant filed [her own trademark application at issue] on December 22, 2005..." (Id. at ¶ 8.) There is no justification for

Applicant's failure to directly answer straightforward allegations about topics within her knowledge, and if the untimely Answer is to be considered at all, Applicant should be ordered to amend to give a more definite statement of her allegations.

In the remainder of the paragraphs, Applicant either simply objects to the corresponding allegations and proceeds to plead improper argument (see Id. at ¶¶ 1, 3, 7, 9, 10 ("Applicant strongly objects"), or alternatively, does not object but simply argues "Again, there is no evidence that Opposer..." (See Id. at ¶¶ 11, 12.)

Applicant argues, for example, "Unless Opposer can provide evidence of its extensive marketing..." (id. at ¶ 7), or "Thus, without such evidence, registration cannot be withheld in this instance." (Id. at ¶ 11.) This improper argument has been rejected by the TTAB because it requires the Board to interpret the pleadings, which should be straightforward and comply with the FRCP. Natl. Football League; Thrifty Corp. If Applicant's untimely Answer is to be considered at all, all of this argument should be stricken because there is no way to respond to it in the context of the pleadings.

V. THE TTAB'S ORDER GRANTING THE PURPORTED "REQUEST TO EXTEND TIME" SHOULD BE SET ASIDE

The TTAB's entry of an order granting the purported "Request to Extend Time" does not require the TTAB to consider the late filed and defective Answer. Instead, that order should simply be vacated because (1) Applicant never gave notice of the Request, and (2) even if she had, it should have been denied on the merits.

A. The TTAB's Order Granting The Purported "Request To Extend Time" Should Be Set Aside Because Applicant Failed To Serve The Request

Every motion filed in *inter partes* proceedings before the TTAB must be served upon the other parties to the proceeding. 37 C.F.R. § 2.119. Proof that the motion was served must be made before the motion can be considered by the TTAB. Id. Proof of service is

demonstrated by attaching to the original document when filed a statement signed by the attorney (or other authorized representative) clearly stating the date and manner in which service was made. Id. All the evidence in this case shows the Request was never served:

- Opposer never received the Request (Finkelstein Decl. at ¶ 10);
- the Request was filed without a proof of service (Exh. G);
- by contrast, the Answer, which was served and received, was originally filed with a proof of service (Exh. C)²; and

- Applicant never filed a "follow up" proof of service for the Request (Exh. H).

Applicant can now offer no credible evidence to demonstrate its Request was ever properly served. Without a proof of service on file, the Request should have never have even been considered, and the order granting it should be vacated.

Even if the TTAB were to consider the improperly noticed Request, it should still be denied on its merits, the Answer should be stricken, and a default should be entered.

B. The TTAB's Order Should Be Set Aside Because Applicant's Request Offers Insufficient Facts To Support A Finding Of Excusable Neglect

Applicant's Request should be stricken as a matter of procedure and substance.

1. The Purported "Request to Extend Time" Should Be Treated As A "Motion to Re-Open Time" Subject To The Excusable Neglect Standard

As a threshold matter, Applicant's "Request to Extend Time" should properly be deemed and analyzed as a "Motion to Re-Open Time." An applicant can only move to "extend time" based upon a showing of good cause when the motion is made prior to the expiration of the period originally set to act. Fed.R.Civ.P. 6(b); 37 C.F.R. § 2.116(a). By contrast, an applicant

² In addition, the Answer, which was served and received, was also served with a cover letter to Opposer's counsel that curiously did not mention the "Request" (which was filed on the same day and should presumably have been served at the same time). (Exh. D.)

must move to "re-open time" based upon a showing of excusable neglect when the applicant has waited to seek relief until after the expiration of the period originally set for taking an action. Id.

In this case, Applicant's Answer was due on December 10, 2007. However, Applicant did not file her Request until December 11, 2007, one day after her period to timely respond had expired.³ The improperly styled "Request to Extend Time" should therefore be treated as a motion to "re-open time" subject to the more stringent standard of excusable neglect. Indeed, Applicant's justification for her late filing would still not even satisfy the good cause standard.

2. The Purported "Request To Extend Time" Should Be Denied Because Applicant Did Not File A Brief In Support Of The Request

Applicant has failed to meet the most basic requirement of submitting a brief that states the facts and legal grounds upon which she relies. Any motion submitted to the TTAB must contain a "full statement of the grounds, and shall embody or be accompanied by a brief." 37 C.F.R. § 2.127(a). In addition, when a party is moving to re-open time, it must set forth with particularity the specific facts that form the basis of its excusable neglect claim; mere conclusory statements are insufficient. See, e.g., Gaylord Entmnt Co. v. Calvin Gilmore Prods. Inc., 59 USPQ2d 1369 (TTAB 2000) (no specific reasons provided for counsel's inaction); HKG Indus. Inc. v. Perma-Pipe Inc., 49 USPQ2d 1156, 1158 (TTAB 1998).

Rather than offer facts and argument, Applicant merely states, in the entirety:

"Applicant has encountered a problem while trying to submit its response online and needs additional time to submit a paper response." These twenty-one words do not constitute a

³ The signature page of Applicant's Request is dated "December 10, 2007." However, the actual Request was not signed by Applicant's counsel and the TTAB docket shows the Request was not electronically filed and received until December 11, 2007. Indeed, as a matter of logic, the Request could not have been electronically filed (or served) on December 10, 2007 due to the alleged problems that purportedly prevented Applicant from timely electronically filing her Answer on December 10.

supporting "brief" as required by 37 C.F.R. § 2.127(a), let alone the factually detailed explanation required by Gaylord and HKG. Applicant's failure to file a brief that offers a single specific fact, or cites a single case, rule, regulation or statute is grounds alone to deny the purported Request.

Even if Applicant's twenty-one words could constitute a brief, the Request should have been denied because it fails to establish Applicant delay was the result of "excusable neglect."

3. Applicant Cannot Establish "Excusable Neglect"

To determine if a party has shown excusable neglect the TTAB considers all relevant circumstances surrounding the party's omission or delay, including (1) the prejudice to the non-movant; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. Pumpkin Ltd. v. The Seed Corps, 43 USPQ2d 1582 (TTAB 1997) (adopting Pioneer Inv. Svcs. Co. v. Brunswick Assocs. Ltd. Pnshp, 507 U.S. 380 (1993)). The third Pioneer factor - the reason for the delay, including whether it was within the reasonable control of the movant - is considered to be the most important factor in this analysis. Pumpkin, 43 USPQ2d at 1587 n.7 (internal citations omitted). It is irrelevant whether the failure to timely take the required action was the result of the party's neglect or its counsel's neglect. Pioneer at 396.

a. Applicant's Delay Was Entirely Within Her Control

The third and most important Pioneer factor weighs heavily in favor of finding no excusable neglect because the delay was well within Applicant's control. Applicant statement that she "encountered a problem while trying to submit [her] response online" offers no specific facts to justify her delay. It was Applicant's obligation to plan accordingly to file online or

allow sufficient time to file a paper response, and she simply failed to do so. Instead, she filed it electronically the next day. If she was capable of filing the Answer electronically a day late, she should have been capable of filing it in the same manner on time. Applicant does not state the TTAB system was down, and even if it was, she does not state why the Answer could not have been mailed on December 10, 2007 accompanied by a Certificate of Mailing, a standard TTAB practice.

b. Applicant's Delay Prejudiced Opposer

Opposer has also been prejudiced as a result of the acceptance of Applicant's late Answer based on a defective Request that was never served on Opposer's counsel. Two of Opposer's pending trademark applications for its SOUL UNDERGROUND mark have been provisionally rejected by the PTO examiner based on section 2(d), citing Applicant's prior filed SOUL STAR UNDERGROUND mark at issue in these proceedings. If Opposer's instant motion is granted, these refusals will be withdrawn. If, however, Opposer's instant motion is denied and Applicant is allowed to interpose her untimely Answer, she may be granted a registration that will form the basis of a final refusal of both of Opposer's applications. This would substantially prejudice Opposer, and would grant Applicant a windfall despite her failure to timely file her Answer. Moreover, the added delays brought about by this instant motion practice resulting from Applicant's failure to file a timely Answer and to give notice of the Request only adds to this prejudice.

c. Applicant's Delay Is The Result Of Bad Faith

All of the facts of this case point to Applicant's bad faith. The Answer was served but the Request never was; the Request was mischaracterized and thus subject to a more lenient standard; and the Request itself is devoid of any facts or legal argument. This blatant pattern of non-compliance with the TTAB's notice provisions and pleading rules demonstrates Applicant's

bad faith.

Given the totality of the circumstances, which demonstrate a repeated disregard for the TTAB's rules, the Pioneer factors balance in favor of denying Applicant's improperly styled "Request to Extend Time." The TTAB should therefore set aside its order and grant Opposer the default requested herein.

VI. CONCLUSION

For the aforementioned reasons, Opposer respectfully requests that the TTAB vacate its January 22, 2008 Order, enter a default in Opposer's favor, and sustain Opposer's Opposition. Alternatively, at the least, the order should be vacated and Applicant should be ordered to substantially amend her Answer to strike the improper arguments and offer a more definite statement of her evasive responses.

DATED: February 8, 2008

DREIER STEIN KAHAN BROWNE WOODS GEORGE
LLP

By 

William A. Finkelstein
Attorney for Opposer

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DECLARATION OF WILLIAM A. FINKELSTEIN

I, William A. Finkelstein, declare:

1. I am an attorney duly licensed to practice before the federal and state courts in the State of California, County of Los Angeles. I am a partner in Dreier Stein Kahan Browne Woods George LLP, counsel for Opposer Swat.Fame, Inc. ("Opposer"). I make this Declaration in support of Opposer's Motion to (1) Strike Answer In Its Entirety And Enter Default, Or In The Alternative, For A More Definite Statement And To Strike Impertinent Allegations; And (2) Set Aside Order Granting "Request To Extend Time." I have personal knowledge of the matters stated herein, except where stated on information and belief, and if called as a witness, I would and could competently testify thereto.
2. Attached hereto and marked as Exhibit A is a true and correct copy of the Notice of Opposition filed by Opposer on October 31, 2007.
3. Attached hereto and marked as Exhibit B is a true and correct copy of a 40 Day Notice to Answer issued by the TTAB.
4. Attached hereto and marked as Exhibit C is a true and correct copy of the Answer filed by Applicant Melvina Goren ("Applicant") on December 11, 2007.
5. Attached hereto and marked as Exhibit D is a true and correct copy of the cover letter that accompanied Applicant's Answer.
6. Attached hereto and marked as Exhibit E is a true and correct copy of the Proof of Service filed by Applicant, which is dated December 11, 2007.
7. Attached hereto and marked as Exhibit F is a true and correct copy of the TTAB's confirmation of electronic filing for the Answer.
8. Attached hereto and marked as Exhibit G is a true and correct copy of the

Request to Extend Time To Answer ("Request") filed by Applicant on December 11, 2007.

9. Attached hereto and marked as Exhibit H is a true and correct copy of the TTAB docket for these proceedings, printed on February 7, 2008 from the TTAB's website.

10. Attached hereto and marked as Exhibit I is a true and correct copy of the TTAB's confirmation of electronic filing for the Request.

10. Attached hereto and marked as Exhibit J is a true and correct copy of the TTAB's January 3, 2008 Order.

11. As counsel of record for Opposer I am to be served any papers related thereto and am the recipient of all correspondence related to these proceedings. To the best of my knowledge, I never received the Request filed by Applicant in these proceedings. I have diligently searched my files and email and consulted with the persons in my office who are responsible for the maintenance thereof and the delivery of my mail, and I have confirmed to the fullest extent possible that the Request was never received by my office. I did, however, receive Applicant's Answer. The first time I learned about the filing of the Request was when I received the TTAB's January 3, 2008 Order granting the Request as conceded because it was unopposed. If I had received service of the Request, my client would have certainly instructed me to oppose it because Applicant's Answer has caused prejudice to Opposer by virtue of it being the basis of a provisional refusal of two of Opposer's pending applications for SOUL UNDERGROUND.

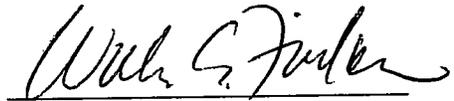
I declare under laws of the United States of America that the foregoing is true and correct. Executed on February 8, 2008, at Santa Monica, California.



William A. Finkelstein

Certificate of Electronic Transmission

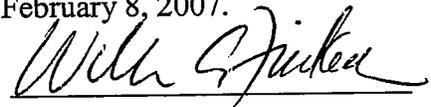
I hereby certify that this Motion To (1) Strike Answer In Its Entirety And Enter Default, Or In The Alternative, For A More Definite Statement And To Strike Impertinent Allegations; And (2) Set Aside Order Granting "Request To Extend Time" is being transmitted by electronic mail to the Trademark Trial and Appeal Board through its electronic filing system located at <http://estta.uspto.gov> on February 8, 2007.



William A. Finkelstein

Certificate of Service

I hereby certify that this Motion To (1) Strike Answer In Its Entirety And Enter Default, Or In The Alternative, For A More Definite Statement And To Strike Impertinent Allegations; And (2) Set Aside Order Granting "Request To Extend Time" was served on Applicant by delivering a true and correct copy thereof to Applicant's Attorney at her address of record by First Class Mail addressed to Patricia Lawrence Kolaras, PLK Law Group, 390 Amwell Road, Bldg 3, Suite 313, Hillsborough, NJ 08844 , on February 8, 2007.



William A. Finkelstein

Exhibit A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 76/652351 filed 12/22/05 for the mark SOUL STAR UNDERGROUND & Design and published in the Official Gazette on 7/10/07.

Swat.Fame, Inc.,

Opposer,

vs.

Melvina Goren,

Applicant

Opposition No. _____

NOTICE OF OPPOSITION

Swat.Fame, Inc., a company organized and existing under the laws of the state of California, located and doing business at City of Industry, CA, believes that it will be damaged by registration of the mark SOUL STAR UNDERGROUND & Design by Applicant and hereby opposes the same.

As grounds for opposition it is alleged that:

1. Opposer for many years has been engaged in the manufacture and sale of a wide range of apparel in commerce in the United States.

2. On July 27, 2005, a date prior to Applicant's filing date, Opposer filed trademark application S.N. 78/680003 for the trademark UNDERGROUND SOUL

based on §1(b), "intent to use", for "apparel" in Class 25 which was later amended on June 23, 2006 to the following goods: "clothing, namely jeans, pants, slacks, trousers, gauchos, capris, crops, bottoms, shorts, Bermuda shorts, coveralls, overalls, skirts, miniskirts, dresses, jumpsuits, tops, blouses, halter tops, tank tops, cardigans, jerseys, T-shirts, shirts, knit shirts, polo shirts, sweaters, turtlenecks, vests, sweatshirts, sweatpants, boxer shorts, underwear, socks, suits, sport coats, blazers, coats, jackets, raincoats, overcoats, and headwear."

3. At various times after the filing of its aforesaid application, Opposer commenced use of the trademark UNDERGROUND SOUL as presented in its distinctive format as set forth in Exhibit A, also sometimes referred to as SOUL UNDERGROUND (collectively the "Marks"), for the following goods: "jeans, crops, skirts, pants, shorts, miniskirts, Bermuda shorts, overalls and capris", in commerce in the United States.

4. On July 24, 2006, Opposer filed an Amendment to Allege Use of trademark application S.N. 78/680003 for the following goods: "skirts, pants, shorts, miniskirts and Bermuda shorts" and requested that said application be divided. On August 12, 2006, the Patent and Trademark Office accepted the Amendment to Allege Use, divided the application and created a new "child" application S.N. 78/977428 which subsequently issued as Registration No. 3,194,259 on January 2, 2007 to Opposer for the trademark UNDERGROUND SOUL, for "skirts, pants, shorts, miniskirts and Bermuda shorts" in Class 25, with a priority constructive use date of July 27, 2005, a date prior to Applicant's filing date.

5. On June 29, 2007, Opposer filed a Statement of Use for trademark application S.N. 78/680003 for the following goods: "jeans, capris, crops and overalls" and requested that said application be divided again. On August 20, 2007, the Patent and Trademark Office processed the Request to Divide, and on September 27, 2007 accepted the Statement of Use, dividing the application and created a second new "child" application S.N. 78/978973, which subsequently issued as Registration No. 3,328,014 on October 30, 2007 to Opposer for the trademark UNDERGROUND SOUL, for "jeans, capris, crops and overalls" in Class 25, with a priority constructive use date of July 27, 2005, a date prior to Applicant's filing date.

6. Opposer's "parent" application S.N. 78/680003 for the trademark UNDERGROUND SOUL has received a Notice of Allowance and continues to be pending for the remaining following goods: "clothing, namely slacks, trousers, gauchos, bottoms, coveralls, dresses, jumpsuits, blouses, halter tops, tank tops, cardigans, jerseys, T-shirts, tops, shirts, knit shirts, polo shirts, sweaters, turtlenecks, vests, sweatshirts, sweatpants, boxer shorts, underwear, socks, suits, sport coats, blazers, coats, jackets, raincoats, overcoats, and headwear." If and when a registration issues for any or all of these goods, it will have a priority constructive use date of July 27, 2005, a date prior to Applicant's filing date.

7. Through extensive marketing and sales, Opposer's Marks have acquired and now possess a favorable reputation and goodwill and said Marks have acquired a reputation among the trade and consumers as identifying quality apparel produced and sold exclusively by Opposer.

8. Applicant filed trademark application S. N. 76/652351 on December 22, 2005 to register the mark SOUL STAR UNDERGROUND & Design based on §1(b), "intent to use", for "t-shirts, tank tops, hooded sweatshirt, sweatshirt, shorts, pants, skirts, jackets, trucker hats, baseball caps, flip flops, bandanas " in Class 25.

9. The goods to which Applicant's claimed trademark is intended to be applied and the goods on and for which Opposer uses, has registered, and has applied for its Marks are identical or similar goods that are sold through the same channels of trade to the same purchasers.

10. When Applicant's claimed trademark would be applied to its goods, there is a likelihood of confusion, mistake or deception in that purchasers will erroneously believe that Applicant's goods either originate with, or are sponsored, approved or licensed by, or are in some way legitimately connected with Opposer.

11. Registration of the mark sought to be registered by Applicant is barred by the provisions of Section 2(d) (15 U.S.C. 1052(d)) of the Trademark Act of 1946 for the reason that it consists of or comprises a mark which so resembles marks previously applied for, registered, and/or used by Opposer, and not abandoned, as to be likely, when applied to the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive.

WHEREFORE, Opposer believes that it will be damaged by registration of Application S:N 76/652351 and therefore prays that this Opposition be sustained and the registration sought by Applicant be refused.

Opposer hereby appoints William A. Finkelstein, member of the Bar of the State of California, and Dreier Stein & Kahan LLP, 6th Floor - North Tower, 1620 26th

Street, Santa Monica, California 90404, as its attorneys to prosecute this Opposition, with full power of substitution and revocation, and to transact all business in the Patent and Trademark Office in connection therewith. All correspondence is to be forwarded to the said William A. Finkelstein.

By: 

William A. Finkelstein, Esq.
Dreier Stein & Kahan LLP
Attorneys for Opposer
6th Floor - North Tower
1620 26th Street
Santa Monica, CA 90404
424-202-6014

Dated: October 31, 2007

EXHIBIT A

Soul underground



Exhibit B

William Finkelstein

From: ESTTA@USPTO.GOV
Sent: Wednesday, October 31, 2007 4:00 PM
To: William Finkelstein
Subject: Notice of Opposition

United States Patent and Trademark Office Trademark Trial and Appeal Board P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: October 31, 2007

Opposition No 91180485
Serial No. 76652351

Patricia Lawrence Kolaras
PLK Law Group
390 Amwell Rd. Bldg. 3 Suite 313
Hillsborough, NJ 08844
patricia@plklawgroup.com
Swat.Fame, inc.

v.

GOREN, MELVINA

William A. Finkelstein
Dreier Stein & Kahan LLP
1620 26th Street 6th Floor - North Tower
Santa Monica, CA 90404
wfinkelstein@dslkllp.com

ESTTA172153

A notice of opposition to the registration sought in the above-identified application has been filed. The notice of opposition can be viewed and printed at <http://ttabvue.uspto.gov/ttabvue/v?qs=91180485>

ANSWER IS DUE FORTY DAYS after the transmission date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the Trademark Trial and Appeal Board Manual of Procedure (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: November 20, 2007

Discovery period to close: May 18, 2008

30-day testimony period for party
in position of plaintiff to close: August 16, 2008

30-day testimony period for party
in position of defendant to close: October 15, 2008

15-day rebuttal testimony period
for plaintiff to close: November 29, 2008

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b).
An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the Official Gazette notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

Exhibit C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant, SOUL STAR UNDERGROUND, Serial No. 76652351 filed with the United States Patent & Trademark Office (hereinafter referred to as the "PTO") December 22, 2005 submits this response to the Notice of Opposition filed on behalf of Application Serial No. 78680003 for the trademark UNDERGROUND SOUL filed on July 27, 2005.

Swat Fame, Inc.,

Opposer

vs.

Melvina Goren,

Applicant

Opposition No. 91180485

ANSWER

Melvina Goren (hereinafter referred to as "Applicant"), an individual, located in Brooklyn, New York, hereby refutes Swat Fame, Inc.'s (hereinafter referred to as "Opposer") argument, mailed October 31, 2007, which contends that Applicant's mark, SOUL STAR UNDERGROUND will likely cause confusion with Opposer's mark, UNDERGROUND SOUL.

GENERAL OBJECTIONS

1. Applicant objects to Paragraph 1 of the Opposition to the extent that Opposer purports to have been engaged in the manufacture and sale of "a wide range of apparel in commerce in the United States" for several years. Applicant has conducted research to investigate this statement and to date has not found any evidence to support Opposer's claim of its presence in commerce. Unless Opposer can prove otherwise, the Opposer's claim is without merit.

2. Applicant neither accepts nor denies Paragraph 2 of the Opposition.

3. Applicant objects to Paragraph 3 of the Opposition to the extent that Applicant has no knowledge of Opposer's actual use and has not been presented with or discovered any evidence to support Opposer's claim of its use of the mark UNDERGROUND SOUL in the "distinctive format" that is displayed in Opposer's Exhibit A. The "distinctive format" that Opposer alleges is displayed in Opposer's Exhibit A, but yet there is no proof of such "distinctive format" prior to the date in which Applicant filed its application with the PTO. Applicant requests proof of Opposer's use of the "distinctive format" prior to the registration date of Applicant's application with the PTO. As stated in Paragraph 2 of the Opposition, Opposer filed an application with the PTO on July 27, 2005 for the mark UNDERGROUND SOUL in standard characters. Without contrary evidence of the Opposer's use of its "distinctive format," it must be assumed that the standard characters illustrated in Opposer's application were only used in commerce. Additionally, Opposer contends without justification that its mark, which was registered only as UNDERGROUND SOUL, is somehow entitled to be referred to as SOUL UNDERGROUND, which is a completely different mark. Opposer attempts to

make this claim without merit; SOUL UNDERGROUND was never registered, and therefore such a claim is without merit because trademark law does not permit one to assume protection of the inverse of a mark which depicts an entirely different impression, unless a new application is filed to reflect such a change.

4. Applicant neither accepts nor denies Paragraph 4 of the Opposition.

5. Applicant neither accepts nor denies Paragraph 5 of the Opposition.

6. Applicant neither accepts nor denies Paragraph 6 of the Opposition.

7. Applicant objects to Paragraph 7 of the Opposition to the extent that Opposer fails to provide evidence of "extensive marketing and sales" as alleged in its Opposition. There is no notable knowledge and existence of the Opposer's mark in commerce. Furthermore, as a result of thorough investigation, there is no evidence or sufficient knowledge which supports Opposer's contention that the mark has "acquired a reputation among the trade and consumer" in connection with "quality apparel." Unless Opposer can provide evidence of its extensive marketing and sales reports for the past two (2) years, the claim is without support.

8. Applicant neither accepts nor denies Paragraph 8 of the Opposition.

9. Applicant objects to Paragraph 9 of the Opposition to the extent that Opposer argues that Applicant's trademark is intended to be applied to goods which are identical to the goods in connection with Opposer's trademark. However, Opposer's initial application has identified virtually every known variation of wearing apparel, forty two (42) types to be exact. Therefore, it would be impossible for any applicant, not only the Applicant at issue here, to identify completely different configurations of common goods when the class of clothing apparel consists of nearly everything Opposer has

included in its application. Trademark protection does not extend to a common class of goods, but rather allows marks to indicate the source of its goods with its exclusive registered trademark. The scope of Opposer's goods are so common to the apparel industry that it would severely undermine the legislative intent of the Trademark Act and would unduly prejudice the Applicant from utilizing the very arbitrary words SOUL or UNDERGROUND in connection with its goods.

10. Applicant strongly objects to Paragraph 10 of the Opposition because a likelihood of confusion fails to exist where Applicant's trademark SOUL STAR UNDERGROUND, has a very unique, stylized design feature entailing flowers, wrapping vines, coils, swirls and spirals as referenced in the mark as attached to the application; the first two words, SOUL STAR are placed in big letters over the word UNDERGORUND, thus making SOUL STAR the dominant feature of the mark. Although unlikely, in the event the Opposer can provide evidence to show its use of the mark in the "distinctive format" as displayed in Opposer's Exhibit A, Applicant's mark is nonetheless very dissimilar from that of Opposer's mark because the dominant feature of Opposer's mark is SOUL with the word UNDERGROUND going through the word SOUL which is drastically different than Applicant's mark. Therefore, both marks are very distinct from each other and such distinguishable characteristics will allow them to co-exist without the threat of confusion.

11. Applicant strongly objects to Paragraph 11 of the Opposition to the extent that Opposer argues that registration of Applicant's mark is barred by the provisions of Section 2(d) of the Trademark Act of 1946 which provides that a mark will be denied registration if another mark 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. That is not the case here because the Applicant's mark and the Opposer's mark are completely distinctive as specified herein in Paragraph 10, and therefore will not cause confusion, mistake or deception amongst consumers in the marketplace. Additionally, Applicant's mark was submitted and the PTO could not support a finding of existing marks that were either similar to Applicant's mark or that could possibly cause confusion with Applicant's mark. Thus, without such evidence, registration cannot be withheld in this instance.

12. Again, there is no evidence that Opposer has actually used its mark in the "distinctive format" as alleged in the Opposition. In fact, there is no trace of the so-called "distinctive format" as used in commerce. To that point, although Opposer was very diligent in submitting an application on behalf of its existing mark, UNDERGROUND SOUL, in which the characteristics of that mark was deliberately divided to coincide with its specific use, Opposer in filing UNDERGROUND SOUL neglected to use proper due diligence in registering the SOUL UNDERGROUND mark as claimed, which by the way, is argued to be more consistent with Opposer's current use of the mark in commerce. Further, one could argue that Opposer's random submission for SOUL UNDERGROUND (Serial Nos. 77251393 and 77253166 respectively) dated nearly two (2) months after Applicant's mark, SOUL STAR UNDERGROUND was published for opposition was an act done in bad faith. Opposer's claim that UNDERGROUND SOUL is also referred to as SOUL UNDERGROUND is without merit and further shows

Opposer's unfair attempts to secure UNDERGROUND SOUL as against the registered SOUL STAR UNDERGROUND mark.

WHEREFORE, Applicant believes that the evidence fails to support a likelihood of confusion or a claim for damage suffered by Opposer if registration is granted, and therefore prays that this Response be sustained and the Opposition sought by Opposer be denied.

Applicant hereby appoints Patricia Lawrence Kolaras, member of the Bar of the State of New Jersey, and PLK Law Group, P.C., 390 Amwell Road, Building 3, Suite 313, Hillsborough, New Jersey 08844 as its attorneys to defend this Response, with full power of substitution and revocation, and to transact all business in the United States Patent & Trademark Office in connection therewith. All correspondence is to be forwarded to the PLK Law Group, P.C. at the address indicated herein.

BY: _____

Patricia L. Kolaras, Esq.
PLK Law Group, P.C.
390 Amwell Road
Building 3, Suite 313
Hillsborough, NJ 08844
(908) 431-3108

Dated: December 11, 2007

This response was sent to William A. Finkelstein of Dreier Stein & Kahan, LLP, located at 1620 26th Street, 6th Floor – North Tower, Santa Monica, CA 90404 via Express Mail on behalf of the Opposer in accordance with 37 C.F.R. §2.119.

BY: Patricia L. Kolaras

Patricia L. Kolaras, Esq.
PLK Law Group, P.C.
390 Amwell Road
Building 3, Suite 313
Hillsborough, NJ 08844
(908) 431-3108

Dated: December 11, 2007



Exhibit D



390 Amwell Road
Bldg. 3 Suite 313
Hillsborough, NJ 08844

Ofc: 908-431-3108
Fax: 908-431-3109

Patricia@PLKLawGroup.com
www.PLKLawGroup.com

December 11, 2007

William A. Finkelstein, Esq.
Dreier Stein & Kahan, LLP
1620 26th Street, 6th Floor – N. Tower
Santa Monica, CA 90404

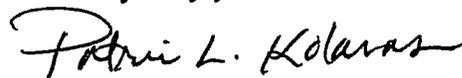
Re: Answer to Notice of Opposition involving Serial No. 76652351

Dear Mr. Finkelstein:

I represent Melvina Goren, applicant, in the above referenced matter. Please find enclosed applicant's answer to the Notice of Opposition provided by your office.

Should you like to contact me, please do so at the number above.

Very truly yours,


Patricia Lawrence Kolaras, Esq

Swat.Fame, Inc. v. Goren;
Oppn No. 91180485
Opposer's Exhibit "D"

Exhibit E

This response was sent to William A. Finkelstein of Dreier Stein & Kahan, LLP, located at 1620 26th Street, 6th Floor -- North Tower, Santa Monica, CA 90404 via Express Mail on behalf of the Opposer in accordance with 37 C.F.R. §2.119.

BY: Patricia L. Kolaras

Patricia L. Kolaras, Esq.
PLK Law Group, P.C.
390 Amwell Road
Building 3, Suite 313
Hillsborough, NJ 08844
(908) 431-3108

Dated: December 11, 2007

Exhibit F

ESTTA Tracking number: **ESTTA179953**

Filing date: **12/11/2007**

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

Proceeding	91180485
Party	Defendant GOREN, MELVINA
Correspondence Address	Patricia Lawrence Kolaras PLK Law Group 390 Amwell Rd. Bldg. 3 Suite 313 Hillsborough, NJ 08844 patricia@plklawgroup.com
Submission	Answer
Filer's Name	Patricia Lawrence Kolaras Esq
Filer's e-mail	patricia@plklawgroup.com
Signature	/Patricia Lawrence Kolaras Esq/
Date	12/11/2007
Attachments	Soul Star Underground Response.pdf (7 pages)(35795 bytes)

Exhibit G

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

Applicant, SOUL STAR UNDERGROUND, Serial No. 76652351 filed with the United States Patent & Trademark Office (hereinafter referred to as the "PTO") December 22, 2005 submits this response to the Notice of Opposition filed on behalf of Application Serial No. 78680003 for the trademark UNDERGROUND SOUL filed on July 27, 2005.

Swat Fame, Inc.,

Opposer

vs.

Melvina Goren,

Applicant

Opposition No. 91180485

REQUEST FOR EXTENSION OF TIME

Applicant hereby requests an extension of time from the PTO and the Opposer to answer the Opposer's Opposition dated October 31, 2007. Applicant has encountered a problem while trying to submit its response online and needs additional time to submit a paper response.

Applicant hereby appoints Patricia Lawrence Kolaras, member of the Bar of the State of New Jersey, and PLK Law Group, P.C., 390 Amwell Road, Building 3, Suite

313, Hillsborough, New Jersey 08844 as its attorneys to defend this Response, with full power of substitution and revocation, and to transact all business in the United States Patent & Trademark Office in connection therewith. All correspondence is to be forwarded to the PLK Law Group, P.C. at the address indicated herein.

BY: _____

Patricia L. Kolaras, Esq.
PLK Law Group, P.C.
390 Amwell Road
Building 3, Suite 313
Hillsborough, NJ 08844
(908) 431-3108

Dated: December 10, 2007

Exhibit H

Exhibit I

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>

ESTTA Tracking number: **ESTTA179868**

Filing date: **12/11/2007**

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

Proceeding	91180485
Party	Defendant GOREN, MELVINA
Correspondence Address	Patricia Lawrence Kolaras PLK Law Group 390 Amwell Rd. Bldg. 3 Suite 313 Hillsborough, NJ 08844 patricia@plklawgroup.com
Submission	Answer
Filer's Name	Patricia Lawrence Kolaras Esq
Filer's e-mail	patricia@plklawgroup.com
Signature	/Patricia Lawrence Kolaras Esq/
Date	12/11/2007
Attachments	Request of Extension of Time.pdf (2 pages)(18172 bytes)

Exhibit J

William Finkelstein

From: ESTTA@uspto.gov
Sent: Tuesday, January 22, 2008 7:25 AM
To: William Finkelstein
Subject: TTAB Order - Do Not Reply By E-mail. Mail Box Not Monitored.

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

vb

Mailed: January 22, 2008

Opposition No. 91180485

Swat.Fame, inc.

v.

GOREN, MELVINA

Vionette Baez, Paralegal

Applicants uncontested motion filed (December 11, 2007) to extend time to file its answer to the notice of opposition cancel is granted as conceded.

In view thereof, applicants answer filed (December 11, 2007) is hereby accepted and has been made of record.

Trial dates remain as indicated in the Boards institution order.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

Swat.Fame, Inc. v. Goren;
Oppn No. 91180485
Opposer's Exhibit "J"

2/8/2008

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>