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

Proceeding	91181994
Party	Plaintiff The Federation Of The Swiss Watch Industry
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Attachments	Opposer's Corrected 1st Amended Notice of Opposition.PDF (8 pages)(23027 bytes)

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

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FEDERATION OF THE SWISS WATCH INDUSTRY,	:	
	:	Opposition No. 91181994
	:	(Serial No. 77/230,495)
Opposer,	:	SWISS MILITARY CALIBRE
	:	
v.	:	Opposition No. 91182730
	:	(Serial No. 77/242,894)
FIRST SBF HOLDING, INC.,	:	SWISS CALIBRE
	:	MILITARY
	:	
Applicant.	:	Opposition No. 91181746
	:	(Serial No. 77/217,985)
	:	SWISS CALIBRE
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CORRECTED FIRST AMENDED NOTICE OF OPPOSITION

Pursuant to 37 C.F.R. 2.107 and the Trademark Trial and Appeal Board’s Order dated September 10, 2009, Federation of the Swiss Watch Industry (“Opposer” or “Federation” files its Corrected First Amended Notice of Opposition in connection with consolidated Opposition No. 91182730 and states as follows:

Federation of the Swiss Watch Industry (“Opposer”), an unincorporated association formed under the laws of Switzerland, Rue d’ Argent 6, CH-2501, Biennes, Switzerland, believes it will be damaged by registration of the following applications: Serial No. 77/230,495 for SWISS MILITARY CALIBRE in Class 14; Serial No. 77/242,894 for SWISS CALIBRE MILITARY in Class 14; and Serial No. 77/217,985 for SWISS CALIBRE (collectively referred to herein as the “Subject Applications”) and hereby opposes the same.

The grounds for opposition are as follows:

The Parties

1. For many years, Opposer has been the Swiss watch industry's leading trade association. Opposer is a non-profit association with over 500 members representing more than 90% of all Swiss watch manufacturers. Opposer counts such renown watch manufacturers as Cartier, Breitling, Baume & Mercier, Gucci, Longines, Movado, Omega, Piaget and Rolex among its members.

2. Opposer's responsibilities to its members include representing and defending its members' interests through legal proceedings as well as protecting and supporting its members' overall common interests and policy goals regarding the watch industry generally.

3. In order to be classified as a true "Swiss" or "Swiss made" watch by Opposer, a given watch must satisfy an exacting set of standards. As a result, those watches emanating from Switzerland enjoy an unsurpassed reputation for combining quality, craftsmanship, and aesthetic beauty. Therefore, the intrinsic value of a watch's Swiss origin is immeasurable.

4. For over 70 years, Opposer's Certification Marks SWISS and SWISS MADE have been used to denote those timepieces which it determines meet the high standards it demands of a timepiece wishing to claim entitlement to assertions of Swiss lineage. Only a watch which is truly of Swiss Origin will be certified as SWISS or SWISS MADE by Opposer. A watch is truly SWISS or SWISS MADE if its movement is Swiss, its movement is cased up in Switzerland and the manufacturer carries out the final inspection in Switzerland.

5. A "SWISS MOVEMENT" is a movement that has been assembled in Switzerland; has been inspected in Switzerland, and components of Swiss manufacture account for at least 50% of the total value of the movement, without taking into account the cost of assembly.

6. Opposer is the owner of Registration Nos. 3,047,277 and 3,038,819 for the Certification Marks SWISS and SWISS MADE, respectively, for use in connection with “horological and chronometric instruments, namely, watches, clocks and their component parts and fittings thereof.”

7. Upon information and belief, Applicant is a corporation organized and existing under the laws of New York. Upon information and belief, Applicant manufactures and sells watches in Class 14 which do not originate in Switzerland and do not meet the high standards used by Opposer to certify such goods as being of Swiss origin.

The Subject Applications

8. On July 31, 2007 Applicant filed Application Ser. No. 77/242,894 to register SWISS CALIBRE MILITARY for use in connection with watches in Class 14. This application was based on legal use in commerce pursuant to Section 1(a) of the Trademark Act and alleged a first use date in commerce of July 25, 2007. Application Ser. No. 77/242,894 was published in the Official Gazette on February 5, 2008. Opposer timely filed a Notice of Opposition on February 29, 2008. This opposition proceeding was assigned No. 91182730.

9. On July 16, 2007 Applicant filed Application Ser. No. 77/230,495 to register SWISS MILITARY CALIBRE for use in connection with watches in Class 14. This application was based on legal use in commerce pursuant to Section 1(a) of the Trademark Act and alleged a first use date in commerce of June 28, 2007. Application Ser. No. 77/230,495 was published in the Official Gazette on November 28, 2007. Opposer timely filed a Notice of Opposition on January 17, 2008. This opposition proceeding was assigned No. 91181994 and was later consolidated into Opposition No. 91182730.

10. On June 28, 2007 Applicant filed Application Ser. No. 77/217,985 to register SWISS CALIBRE for use in connection with watches in Class 14. This application was based on legal use in commerce pursuant to Section 1(a) of the Trademark Act and alleged a first use date in commerce of October 10, 2002. Application Ser. No. 77/217,985 was published in the Official Gazette on December 4, 2007. Opposer timely filed a Notice of Opposition on January 2, 2008. This opposition proceeding was assigned No. 91181746 and was later consolidated into Opposition No. 91182730.

Deceptive Mark Pursuant to Section 2(a) of the Trademark Act

11. Upon information and belief, Applicant uses the SWISS MILITARY CALIBRE, SWISS CALIBRE MILITARY and SWISS CALIBRE marks as identified in the Subject Applications in connection with the sale of goods identical to those sold by Opposer's members, to the identical customers, through the same channels of trade.

12. When used in connection with the goods of the Applicant, the SWISS MILITARY CALIBRE, SWISS CALIBRE MILITARY and SWISS CALIBRE marks as identified in the Subject Applications will be immediately understood by the relevant public as a geographic indicator signifying a watch that originates from Switzerland. Believing they are purchasing a true Swiss watch, when in fact they are not, consumers are likely to be influenced in their purchasing decisions by Applicant's use of SWISS MILITARY CALIBRE, SWISS CALIBRE MILITARY and SWISS CALIBRE.

13. Upon information and belief, when used in connection with Applicant's Goods, the marks SWISS MILITARY CALIBRE, SWISS CALIBRE MILITARY and SWISS CALIBRE as identified in the Subject Applications are deceptive marks and therefore may not be registered pursuant to Section 2(a) of the Trademark Act, § 15 U.S.C. 1052(a).

Deceptively Misdescriptive Mark Pursuant to Section 2(e)(3) of The Trademark Act

14. Upon information and belief, a grant of registration to the Applicant in connection with the Subject Applications would bestow upon Applicant the right to use marks which confuse consumers into mistakenly believing that Applicant's Goods are of the same country of origin, and therefore of a comparable level of quality, as those of Opposer's members, thereby creating damage to Opposer and its members.

15. Upon information and belief, when used in connection with Applicant's Goods, the SWISS MILITARY CALIBRE, SWISS CALIBRE MILITARY and SWISS CALIBRE marks as identified in the Subject Applications are primarily geographically deceptively misdescriptive and therefore may not be registered pursuant to Section 2(e)(3) of the Trademark Act, § 15 U.S.C. 1052(e)(3).

Applicant Not Engaging In Lawful Interstate Commerce

16. Pursuant to 19 U.S.C. § 1304 every article of foreign origin imported into the U.S. must be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

17. For country of origin marking purposes under 19 U.S.C. § 1304, the U.S. Customs Department considers the country of origin of watches to be the country of manufacture of the watch movements. Customs has also ruled that when unassembled parts of a watch movement from one country are assembled in a second country, the country of assembly is the country of origin for marking purposes under 19 U.S.C. § 1304.

18. Upon information and belief, Applicant's watches bearing the SWISS MILITARY CALIBRE, SWISS CALIBRE MILITARY and SWISS CALIBRE marks as identified in the Subject Applications do not contain movements manufactured in Switzerland and/or are manufactured from parts made in Switzerland and then sent to other countries in Asia where they are assembled into a completed watch movement.

19. Upon information and belief, Applicant's watches bearing the marks identified in the Subject Applications are marked that the country of origin is SWISS or that the watches are "SWISS MADE." Upon information and belief, such marking is in violation of 19 U.S.C. § 1304. As a result, Applicant is not using the marks identified in the Subject Applications in lawful interstate commerce in violation of 15 U.S.C. § 1051.

20. Upon information and belief, Applicant intentionally made false statements when it filed the Subject Applications and during the prosecution of the Subject Applications that it was using the marks identified in the Subject Applications in lawful interstate commerce. Accordingly, Applicant has committed fraud on the Patent and Trademark Office and the Subject Applications should be deemed invalid and void.

21. Upon information and belief, Applicant intentionally made false statements concerning the use of the marks identified in the Subject Applications in lawful interstate commerce to obtain registrations.

22. Upon information and belief, were it not for the false statements concerning the use of the marks identified in the Subject Application in lawful interstate commerce, the Subject Applications would have been refused and not approved for publication. Therefore, the Subject Applications are void on their face, as a result of the fraud committed by Applicant.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **CORRECTED FIRST AMENDED NOTICE OF OPPOSITION** was sent by first class mail postage pre-paid to Counsel for Applicant at the following addresses:

Joel Weiss, Esq.
Weiss & Arons LLP
1540 Route 202
Suite 8
Pomona, NY 10970

Dated: September 25, 2009

s/Annette P. McGuire