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

In the matter of trademark application serial number is 77/490, 049
For the Mark INNOCENT SKIN
Published in the official Gazette on October 28, 2008

INNOCENT SKIN, INC., A NEVADA CORPORATION

Opposers

v.

MORGEN BENTSEN

Applicant

01/06/2009 SWILSON1 00000008 77490049
01 FC:6402 1200.00 OP

NOTICE OF OPPOSITION

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Opposer Innocent Skin, Inc. believes it will be damaged by registration of the mark shown in the above referenced application, and hereby opposes the same.

01-02-2009

U.S. Patent & TMOfc TM Mail Rcpt Dt #34

The grounds for opposition are as follows:

1. Since at least as early as May 17, 2006, Opposer (and a predecessor-in-interest) have been using the trademark INNOCENT SKIN for video production, promotion, clothing and related products and services in the U.S.

2. Opposer has used and promoted his mark such that it is identified with the services of Opposer, and has gained public recognition and symbolizes the goodwill which Opposer created by offering and selling these products and services.

3. On or about May 15, 2007, Opposer signed a contract with Applicant for the production of a movie and Applicant became familiar with Opposer's business.

4. Upon information and belief, seeing that Opposer had yet to register the trademark INNOCENT SKIN, Applicant believed he could take ownership over what did not belong to him, and filed the instant trademark application which is the subject of this proceeding.

5. Upon learning of the same, Opposer filed to register Opposer's mark. Opposer is the owner of use-based U.S. Application Serial No. 77/625,079 to register INNOCENT SKIN for such goods filed December 2, 2008.

6. Opposer, through his attorneys sent cease-and-desist letters on two occasions to Applicant requesting that he abandon prosecution of the instant application. Applicant has not responded to these letters.

7. Additionally, on or about November 18, 2008, Applicant through counsel directed a letter to Opposer's attorneys indicating that Applicant has created a California business entity known as "Innocent Skin, LLC."

8. Upon information and belief, Applicant has performed aforesaid acts with knowledge and intent to inappropriately trade upon Opposer's goodwill including planning to use the INNOCENT SKIN mark to draw customers to his business and profit.

9. Opposer's mark is associated with Opposer due to its priority of first use therein, and as such Opposer is deserving of having his mark adequately protected with respect to the conduct of his business.

Count I

Likelihood of Confusion

Lanham Act § 2(d)

10. Opposer repeats and alleges the allegations set forth in paragraphs 1 through 9 as set forth herein.

11. Applicant's INNOCENT SKIN mark is identical to Opposer's INNOCENT SKIN mark.

12. The Applicant's registration and use of the mark INNOCENT SKIN would likely create confusion, mistake or deception in the minds of prospective

purchasers as to the origin or source of goods associated with the INNOCENT SKIN mark.

13. Applicant's goods and services are legally related to Opposer's goods and services, both including digital media, entertainment services, transmission of audio visual images via computer and online retailing of media, and within Opposer's zone of expansion.

Count II

False Suggestion of Connection

Lanham Act § 2(a)

14. Opposer repeats and re-alleges the allegations set forth in paragraphs 1 through 13 as though set forth herein.

16. Purchasers familiar with Opposer's goods and services are likely to mistakenly believe that the Applicant's goods and services are somehow sponsored by, authorized, endorsed, affiliated with or otherwise approved by Opposer.

Count III

Agreement Between the Parties

17. Opposer repeats and re-alleges the allegations set forth in paragraphs 1 through 16 as though set forth herein.

18. Applicant and Opposer entered into an agreement for Applicant to invest in a film produced by Opposer. Applicant's role was limited to "investor" and nothing in the agreement entitled Applicant to Opposer's trademark rights in the mark in question.

19. Grounds for opposition exist where an agreement between the parties precludes the applicant from using the mark. Kimberly-Clarke Corp. v. Fort Howard Paper Co., 772 F.2d 860, 227 USPQ 36 (1985); Vaughn Russell Candy Co. v. Cookies In Bloom Inc., 47 USPQ2d 1635 (1998).

Wherefore, for all the foregoing reasons the registration sought by Applicant is contrary to law, and Opposer prays for relief that this opposition be sustained and the trademark application refused.

Our check for the opposition filing fee in the total amount of $1200 is enclosed, $300 per class for the four-class application. No additional fees are believed owed, if any additional fees are owed, please charge Opposer's representative's deposit account no. 50-3116.

Respectfully submitted,

Dated: December 29, 2008

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CERTIFICATE OF FIRST CLASS MAILING

I, hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Trademark Trial and Appeal Board
2900 Crystal Drive,
Arlington, VA 22202-3514

on December 29, 2008

Alexia Albert

12/29/08
Date

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of NOTICE OF OPPOSITION was served by First Class Mail with sufficient postage prepaid, on this 29th day of December, 2008, to the Trademark Trial and Appeal Board at 2900 Crystal Drive, Arlington, VA 22202-3514 and to Registrant:

Morgan Bentsen
12324 Riverside Drive, #4
Valley Village, CA 91607

Dated: December 29, 2008

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