

ESTTA Tracking number: **ESTTA268019**

Filing date: **02/21/2009**

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

Proceeding	91188933
Party	Plaintiff Veronica Infelice
Correspondence Address	Thomas M. Wilentz Thomas M. Wilentz, Attorney at Law, PLLC 75 South Broadway 4th Floor White Plains, NY 10601 UNITED STATES twilentz@tmwlaw.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Veronica Infelice
Filer's e-mail	allgreenenvironment@gmail.com
Signature	/Veronica Infelice/
Date	02/21/2009
Attachments	Opposition document- Facts and Statements.pdf (10 pages)(340806 bytes) EXHIBIT ONE Environment_Logo-1-1.pdf (1 page)(67966 bytes) EXHIBIT TWO AGE - Stars 2.pdf (1 page)(29773 bytes) EXHIBIT THREE walmarts design 1.pdf (1 page)(34396 bytes) EXHIBIT FOUR walmarts design 2.pdf (1 page)(29776 bytes) EXHIBIT FIVE exact color combination as All Green Environment.pdf (1 page)(482712 bytes) EXHIBIT SIX walmart's partial sun rays.pdf (1 page)(1203310 bytes) EXHIBIT SEVEN business cards-May 2007.pdf (1 page)(619317 bytes) EXHIBIT EIGHT CFA FLYER.pdf (1 page)(1088153 bytes) EXHIBIT NINE Green vest uniform Walmart.pdf (1 page)(545969 bytes) EXHIBIT TEN Sun Rays T-shirts All Green Environment.pdf (1 page)(1507483 bytes)

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

The serial no. 77585269 combined with serial no. 77585270 for opposition. The opposition involves two registrations that present common issues; therefore, they will be consolidated.

Registered serial no. 77190187, All Green Environment LLC v. Wal-Mart Stores, Inc. opposition
no._____.

Notice of Opposition

Veronica Infelice, President of All Green Environment LLC, Pro se/individual, business address at 14 Boutonville Road, South Salem, N.Y. 10590, e-mail: allgreenenvironment@gmail.com.

The opposition set forth for marks serial nos. 77585269 and 77585270 by the plaintiff, pro se, who has standing of real interest by ownership of All Green Environment, serial no. 77190187 (serial no. 77646853- priority public use in business cards in June 2007 before defendant's public use, could also be related). There are similarities between the plaintiff 's and defendant's marks that create reasonable basis to belief that the defendant's mark will cause damage to plaintiff's mark because it will generate likelihood of confusion and dilute the distinctive quality of the plaintiff's mark.

/Veronica Infelice/

Plaintiff/ Pro se

President of All Green Environment LLC

It is being requested that the facts and comments listed below are taken into consideration as evidence for this opposition.

1. Facts and Statements

A petition to deny registry of Wal-Mart and design, serial nos. 77585269 and 77585270 is being requested by Veronica Infelice, President of All Green Environment LLC, serial no. 77190187.

1. The plaintiff's Serial no. 77190187 has been registered for goods described as clothing, namely, polo shirts, collared shirts, dress shirts, t-shirts, jeans, casual pants, dress pants, trousers, shorts, belts, hats, scarves, hooded sweaters, skirts; under International Class 25.
2. The defendant's serial nos. 77585269 and 77585270 are consolidated due to the marks' similarities; the defendant has applied to register goods identified as "On-line retail store services featuring *a wide variety of consumer goods; Retail automobile parts and accessories stores; Retail bakery shops; Retail delicatessen services; Retail grocery stores; Retail pharmacy services; *Retail store services featuring a wide variety of consumer goods of others; Retail optical stores; retail automotive supplies and parts stores", under International Class 35.

*Accessories and clothing may be classified under the classifications mentioned above, thus it may allow the defendant to sell goods identical to that of my company's.

2. Facts and Statements

The two marks are being consolidated due to the similarities of the word and design; the single difference between the two marks is that one (serial no. 77585269) contains a color combination of blue for the word and orange for the design, and the other (serial no. 77585270) possesses both word and design in black. The grounds for opposition assert that the defendant's mark will affect potential clientele nationwide as well as internationally due to the likelihood of confusion (The exhibits listed will be presented as attachments):

1. The description of the registered mark, Serial no. 77190187 is specified as (exhibit 1) "The mark consists of an illustration of a leaf with a bright yellow circle in the center that symbolizes the Sun. In the bright yellow

circle there is a zig-zagging line of slightly darker yellow that symbolizes an electro cardiogram of a heartbeat.

*Six thin lines fan out from the circle, symbolic of rays of sunlight (exhibit 2). To the right of the leaf appear the words "ALL GREEN". The word "ENVIRONMENT" appears below the leaf. The color green appears in the wording "ALL GREEN ENVIRONMENT", and in the illustration of the leaf, and in a thin circular line forming the perimeter of the circle in the center of the leaf. The color yellow appears in the circle, and in six thin lines emanating from the circle which symbolize rays of sunlight."

2. Business cards with sun rays displayed under the title, "President" (exhibit 7) were distributed at the June 11, 2007, Conversation-For-Action/A Climate Change Initiative in Bedford Hills, N.Y. The sun rays design serial no. 77646853 is evidence of the similarities of plaintiff's and defendant's designs (exhibit 2).
3. The defendant's mark serial no. 77585269 (exhibit 3) is described as "The mark consists of the word "WALMART" in blue next to an orange design of **six rays symmetrically centered around a circle to resemble a spark. The color(s) blue and ***orange is/are claimed as a feature of the mark."
4. The defendant's mark serial no. 77585270(exhibit 4) is described as "The mark consists of the word "WALMART" next to a design of **six rays symmetrically centered around a circle to resemble a spark. ***Color is not claimed as a feature of the mark."

Below (*)() are evident descriptions of the marks, and capital letters are being applied to point out the similarities:**

*SIX thin lines FAN OUT from the CIRCLE, SYMBOLIC of RAYS of sunlight (exhibit 2).

** SIX RAYS SYMMETRICALLY centered around a CIRCLE to RESEMBLE a spark (exhibit 3 and 4-spark only),

***orange is/are claimed as a feature of the mark. However, ads are displaying the spark in yellow resembling the sun rays (exhibit 3). Since color is not claimed as a feature of the mark (exhibit 5) pictures have been fashioned in green letters and a yellow sun rays design (similar to exhibit 1). The combination is comparable to the colors found in the All Green Environment design.

5. (exhibit 7) Evidence that the sun rays have been introduced and promoted to the public as part of the All Green Environment logo design as of May of 2007; In addition, it shows proof of business card(s) that were

distributed at the June 11, 2007, (exhibit 8 is a copy of the event's flyer) Conversation-For-Action/A Climate Change Initiative in Bedford Hills, N.Y. Mr. Eldridge facilitated his time as my art advisor when I manufactured the business cards. I worked under the upmost respected, admired talent, attentive and professional supervision offered to me by Mr. Eldridge. I highly respect and appreciate his professional opinion due to my knowledge of his training, art background, and gallery quality art work (exhibit 13).

6. (exhibit 1, 2, and 7) Evidence that the sun rays (center) as part of the All Green Environment design is displayed in that fashion because it is a marketing strategy to get the consumer accustomed to associating parts of a design without its entirety, because brain function takes care of the identification process as a whole. The defendant's partial design displayed publically (in-isolation) (exhibit 6). Shows proof that the marketing strategy is often used to encourage consumers/the public to relate a part, to an entirety; and it works because the brain makes a puzzle image, consequently identifying the complete image. That is one of the reasons I applied the sun rays to the business cards and shirts (exhibit 7 and 10).

3. Facts and Statements

Below is the time line of All Green Environment LLC and designs exposure to the public:

1. April 2007- Business certificate was acquired in Westchester, N.Y.
2. Attorney, Thomas M. Wilentz filed to trademark All Green Environment and design logo (exhibit 1).
3. May 2007- Website Domain, All Green Environment was created. Sun rays are very visible at the on-line site; at the screen testimonials (at: www.allgreenenvironment.com)
4. May 2007- I presented a confident speech to John Jay Environmental Club Students, Cross River, N.Y. on behalf of All Green Environment's vision for the environment and its philosophy.
5. **May 2007- Created and manufactured business cards under the supervision of professional artist, Spencer Eldridge (see below: 4 Facts and Statements). The sun rays were applied to the business cards under the title "President" and public distribution started from then on (exhibit 7).**
6. May 2007- Wrote and conducted three broadcasted Podcasts on different days 5/6/07, 5/13/07, and 5/20/07. They were meant to promote environmentally friendly solutions, products, and to introduce the company's name. The Podcasts were broadcasted at Podomatic.com in the United States as well as internationally.

7. May 2007- Promotional t-shirts with large logo were ordered and delivered from Katonah, N.Y. And various manufactures were also contacted and they received the logo design in order to receive estimates of manufacturing and production (exhibit 10- top picture, shirt on the left)
8. May 2007- Jack Knapp of Strauss Paper requested the company's services to design shirts with an accompanying established logo, namely the athletic gym, Saw Mill Club in Mt. Kisco, N.Y.
9. May and June 2007- Designed t-shirts for Saw Mill Club Presentation.
10. May 2007- Drawings of individual parts of the registered logo as well as the entire All Green Environment and design logo were submitted to logo printer in Bridgeport, CT.
11. May 2007 to Present- Promotional t-shirts have been ordered. Sample t-shirts (displaying parts of the logo in various places on shirts) were made in California and printed in Bridgeport, CT. The same company presently continues to supply and print All Green Environment shirts.
12. May 2007- A general e-mail in recognition of the All Green Environment's philosophy was offered to the governor of the state of N.Y. The correspondent/contact was Jeffery Gordon, a spokesman for the State Budget Division.
13. **June 2007- Business cards with sun rays (exhibit 7) displayed under the title, "President" were distributed at the June 11, 2007, Conversation-For-Action/A Climate Change Initiative in Bedford Hills, N.Y. (exhibits 8-event flyer and see below: 4 Facts and Statements). Promotional T-shirts were also distributed at the CFA event.**
14. Summer 2007 to present- Promotional shirts are being promoted at various locations and states and "Agewear.com", the Website Domain name was obtained.
15. August 2007- Promotional hats were embroidered for All Green Environment at Shoreline in White Plains, N.Y.
16. August 2007- Magazine photo shoot with CFA members. All members wore promotional t-shirts displaying the registered logo.
17. September 2007- All Green Environment Essay contest conducted. The All Green Environment and design logo was set as a background on the contest's description e-mail attachment. The information as an e-mail attachment was sent to elite colleges and universities as well as community colleges and institutions in and outside of the United States.
18. October 2007- All Green Environment became an LLC company.
19. November 2007- Photo (members of CFA wearing company's white t-shirts) taken at the CFA photo shoot in August at Pound Ridge, N.Y. was published in the Nov./Dec. issue of the Bedford Magazine, N.Y. and the Ridgefield Magazine, CT.
20. February 2008- Sent letter to George Steinbrenner (contact Mr. Blum) making my services and goods available for the Yankees.

21. January 2009- Filed to register (serial no. 77646853) sun rays as part of All Green Environment LLC (exclusive men's clothes line) (exhibit 2).

22. February 2009- New business cards were manufactured with sun rays printed from the design (serial no. 77646853) and placed under the title "President" (exhibit 2 and 11). They are similar to the very first business cards.

23. February 2009- Currently working on a contract to set merchandise for sale at luxury men's clothing store in Ridgefield, CT.

22. February 2009- Shirts were printed using sun rays logo serial no. 77646853 (exhibit 10-center and bottom pictures).

4. Facts and Statements

Proof of business cards creation which contained trademarked logo and vivid sun rays:

1. A signed statement by Elementary School Art Teacher, Spencer Eldridge (Lewisboro Elementary School in South Salem, N.Y.) will be provided upon request. He witnessed the creation of the very first designed business cards in May of 2007. Mr. Eldridge facilitated his time as my art advisor. I worked under the upmost respected, admired talent, attentive and professional supervision offered to me by Mr. Eldridge. I highly respect and appreciate his professional opinion due to my knowledge of his training, art back ground, and gallery quality art work. I am a per diem/substitute teacher at the same elementary school; also, I am a current participant member of the CFA- Conversation-For-Action-environmental group in Bedford, N.Y., and a trained individual holding a B.S. in Behavioral Science. I could attest that each part of the logo is processed in our brains clearly identifying and distinguishing the uniqueness of the logo. Then the behavioral pattern takes effect, and continues to identify each part of the art with its entirety.
2. **The process of manufacturing the business cards took place as follows:**
 - I printed the business cards using my laptop and printer at my home office.
 - Used the logo which I had e-mailed to the filing attorney on 5-14-2007.
 - Used the Compose Mail area on the e-mail screen to type business information.
 - Printed, cut out and glued the logo picture and the information to create a business card.
 - Finally, printed a copy of the final product.
 - At Mr. Eldridge classroom Art Studio (using my own personal supplies) I freehand designed the sun rays on every business card (he was present at the time).
 - The sun rays were placed in vivid yellow/gold under my company's title, "President".
 - Using an extra fine point "Pilot" gold marker I drew the sun rays (I chose to display the sun rays in yellow/gold to emphasize the company's vision, which means and signifies the representation of a sun rays figure-of a healthy, vibrant man who enjoys the outdoors-All Green Environment.)
3. **Description of logo and its uniqueness (all parts of the art are visually important):**

The logo and all of its parts are designed and trademarked in order to be acknowledged internationally and nationwide as the symbol for the company, "All Green Environment" clothing. The sun rays are designed to identify the exclusive men's attire/apparel line. The yellow (yellow gold on business cards) lines forming the sun rays are an eminent identifiable part of the creation of the entire All Green Environment logo art. Each part of the art was carefully created in order to be used in commerce as a trademark (each individual part

was created with the intent of being trademarked, as time goes, as a unique part, and to be used in commerce to identify several lines of clothing under All Green Environment LLC).

4. **Distribution of cards to the public:**

The business cards were distributed at the June 11, 2007, Conversation-For-Action/A Climate Change Initiative in Bedford Hills, N.Y. (exhibit 8-event's flyer). I handed out promotional T-shirts (the t-shirts were worn on that date by the high school students who volunteered and performed at the event), which had the All Green Environment logo printed on the front of the shirts. At the mentioned event Allen Hershkowitz, Senior Scientist with the NRDC spoke on behalf of Walmart's manufacturing of 5 million energy-efficient florescent light bulbs, an environmental alternative to the use of common light bulbs. At the point, when the speaker opened the discussion for comments; I was glad to hear his point and I thought it could be taken one step further so I asked the following: "Is Walmart going to create or implement a recycling system to collect the used light bulbs since they contain small quantities of mercury?" The business cards displaying the sun rays were distributed by placing them on the welcoming table at the event. The business cards were created to promote uniqueness of my company, and to serve as a visual identification of my company's name and vision for the men's clothing line.

5. Facts and Statements

The defendant's registrations will potentially cause damage because the spark designed for serial nos. 77585269 and 77585270 poses identical similarities in appearance and color (the defendant's television ads display the spark in the color, yellow, which appears similar to the yellow sun rays in the All Green Environment design.

1. The similarities will likely bring about confusion when used in advertisements shown on television and/or on-line (exhibits 5, 6, 7, and 10-when looking at this evidence together, the similarities are strikingly similar).
2. The similarity will deceive clientele in commercial impression-in terms of sales of similar goods, namely accessories and clothing or when used on employee's green uniforms (exhibit 9-on-line picture of a green color employee's vest).
3. The similarity in connotation is obvious (exhibits 1, 2, 3, 5, 9 and 10-when examined together, they show connotation to similar belief. Taking into consideration that the defendant has published information about greening the environment). The use of color green for the words, and yellow for the spark/sun rays will absolutely convey association, similarities, and confusion. Taking evident observations into consideration, all the evidence involved suggest that when examined together, it will create conditions of impulse v. careful, sophisticated purchasing.

6. Facts and Statements

A plead of priority of use (of part of the entire mark, namely sun rays exhibit 7) is in order due to exposure of sun rays in 2007. In examining the DuPont Factors, if I may, the defendant's mark will create confusion in commerce because the distinctive sun rays in the center of the registered design are similar in symmetry (six points each) which will be considered similar and cause confusion to the consumer.

1. The registered All Green Environment logo was carefully designed and created. It's meant to encourage visual/image recognition of the logo's individual parts and its entirety. Each individual part of the All Green Environment logo is eminent and will be identified in that manner in commerce. The business cards (exhibit 7) created in May of 2007; clearly show the sun rays drawn freehand under the title "President" (see: 4 Facts and Statements). The defendant's design next to the company's name will unequivocally present itself to the public in association with the All Green Environment logo (exhibit 1, 3, and 5).
2. In addition, the defendant's association/connotation in relation to their design representing greening the environment will be deceiving. The creation of eco friendly color green vehicles and employee's green vest will attract the consumer to associate the marks and cause confusion. The connotations will suggest similarities and association, leading to deceive the impulsive consumer. The registered mark has been promoted in the United States as well as internationally.

7. Facts and Statements

To conclude:

1. To the parties examining this case, I, the plaintiff plead that the defendant's mark will cause damage due to likelihood that will create confusion to my potential clientele. The evidence provided (exhibits 1-11) to be reviewed and considered are entirely factual and if necessary additional proof when requested (if not submitted as part of exhibits or evidence in this case) will be provided. The trademark serial no. 77190187, All Green Environment logo was registered in order to bona-fide the entire logo with its individual unique parts. The spark/sun rays design in serial nos. 77585269 and 77585270, equally described in serial nos. 77190187 and 77646853 at question (exhibits 2, 7, and 10) are an eminent part of the All Green Environment logo. The sun rays serial no. 77646853 was indeed presented to the public as an impressionable part of the All Green Environment logo in June of 2007 (exhibit 7) and it's

presently being used. The defendant has applied to register a spark design that it is clearly the image of sun rays. I, the plaintiff plead to oppose the registration of marks serial nos. 77585269 and 77585270, Walmart and spark design.

2. I would like to request that the parties examining this case also consider the fact that after conducting extensive research on the defendant's business history, it's been discovered, and I would like to point out, that the defendant has been involved in negative trademark infringement allegations and court trials that have resulted in favor of the accusatory parties. I would like to request an opposition for marks serial nos. 77585269 and 77585270 for registration.
3. Evidently to the lame eye, seeing the entire All Green Environment logo for the first time may form a unique impression; unfortunately it will create confusion, when the consumers/clientele seeking and investing in the registered mark discovers that there is a tremendous similarity between the plaintiff's and the defendant's marks. The sun rays are part of the All Green Environment logo which is intellectual property created with the intension of being uniquely identify in a bona-fide fashion in commerce.
4. The similarities of the defendant's mark's color and design (exhibits 3, 5, and 9) when viewed in advertisements and in connotation with greening the environment; it will affirmatively create likelihood of confusion.
5. A survey (exhibit 12) has been created to identify the sun rays in the center of the All Green Environment logo. In addition, an evident diagram could be presented showing each individual part of the All Green Environment logo, apart from each other. Each individual piece could be put back together with the exception of the sun rays. In the sun rays place, the defendant's spark design (exhibit 3- design only) could be placed and the outcome would show the similarities- sun rays that emanate from an imaginary or visual circle in the center. The fame of the registered mark will be diluted due to strong similarities and connotations associating the greening of the environment.
6. The defendant's goods and services are also described vaguely as "On-line retail store services featuring a wide variety of consumer goods; and Retail store services featuring a wide variety of consumer goods of others" posing a threat in the defendant being able to place a similar logo on the defendant's store sites and on-line stores that already offer identical goods and services to the public, namely, accessories and clothing.
7. The sun rays were designed as part of the registered intellectual property to be used (as displayed to the public on the business cards distributed since May 2007 in junction with the All Green Environment and design logo exhibits 2 and 7) as a signature for the All Green Environment exclusive/luxury men's apparel line.
8. Historically emblems and logos have been used to identify traditional clothing. I have a vision and passion for what I want to accomplish. The vision includes the creation of a clothing empire/enterprise that will identify the United States with fair trade, active commerce, elegance in representation, and with being a signature in the New York clothing industry. In order to do so, in a bona-fide manner, the entire All Green Environment logo serial no. 77190187 should continue to be viewed as unique intellectual property; in parts, as well as in its entirety.
9. I've devoted time researching, have invested funds, and have contacted the right venues to protect the mark as intellectual property. I would like to plead that the rights offered by the trademark commission to protect the entire, distinguished, All Green Environment logo (as well as its parts that form its entirety) remain active and protective; in order to prevent infringement upon All Green Environment logo as intellectual property.

10. With extreme respect to all examining parties, I, the plaintiff, plead to oppose the defendant's mark under the evident premise that the defendant's mark will produce damage and likelihood of confusion in commerce. Evident exhibits 1-12 show the likelihood to cause confusion in commerce nationally as well as internationally. When the evidence is examined together in a display/unit form, the All Green Environment clothing line logo and merchandise; as well as the defendant's logo and advertisements, will all have a strong resemblance and can be confusingly related, thus establishing likelihood of confusion. I've chosen to bring forth this argument/complaint in the form of facts and statements and I hope it serves sufficient. Any additional proof of evidence will be provided upon request. It has been in the tradition of the founder father's of this country to push hard and persevere in the toughest of times. Though economical times are upon us and starting a new company may seem unrealistic; It is with great pleasure that I, the plaintiff announce that it is my belief that sometimes the best things in life are challenging and are accomplished by those, like myself, who have passion, and a persistent drive to realize the unreachable. The similarities of the defendants spark logo and All Green Environment's sun rays are extremely similar. The sun rays are part of the entire All Green Environment logo, and the logo's sun rays were used in priority since June of 2007. I plead that I may have the chance to continue my business with ethics and vision and that the registration for serial nos. 77585269 and 77585270 are denied under the premise that it will cause likelihood of confusion in commerce nationally and internationally. I would like to state and reiterate once more that the opposition set forth for marks serial nos. 77585269 and 77585270 by the plaintiff, pro se, who has standing of real interest by ownership of All Green Environment, serial no. 77190187 (serial no. 77646853- priority public use in business cards in June 2007 before defendant's public use). There are similarities between the plaintiff's and defendant's marks that create reasonable basis to belief that the defendant's mark will cause damage to plaintiff's mark because it will generate likelihood of confusion and dilute the distinctive quality of the plaintiff's mark.

Respectfully and truly,

Veronica Infelice

President of All Green Environment LLC

Pro se



Walmart



Walmart is

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