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Filing date: **05/13/2009**

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

Proceeding	91189412
Party	Plaintiff Esprit IP Limited
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Date	05/13/2009
Attachments	motion for judgment.pdf (32 pages)(1371430 bytes)


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

Applicant:	Mellbeck Ltd.)	
)	
Serial No.:	77518568)	
)	
Filing Date:	July 10, 2008)	
)	
Mark:	)	
)	
Published:	December 2, 2008)	
)	
<hr/>			Opposition No. 91189412
)	
Esprit IP Limited,)	
)	
Opposer,)	
)	
v.)	
)	
Mellbeck Ltd.)	
)	
Applicant.)	

MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to Federal Rule of Civil Procedure 12(c) and Trademark Rule of Procedure 2.127(d), Opposer Esprit IP Limited ("Opposer") moves for a judgment on the pleadings on the following grounds:

I. Background Facts

On July 10, 2008, Mellbeck, Ltd. ("Applicant") filed under Sections 1(a) and 44 (e) of the Trademark Act application Serial No. 77518568 to register the mark  in connection with a large array of apparel items (the "Mark"). In its application, Applicant alleged that the

Mark was used in US commerce at least as early as January 15, 1997 and that it was “using the mark in commerce on or in connection with the identified goods.” Applicant signed the Declaration, which states that “all statements made of his/her own knowledge are true.” A copy of the application for the Mark is attached as Exhibit A.

On March 23, 2009, Opposer filed a notice of opposition against registration of the Mark. A copy of the notice of opposition is attached as Exhibit B. On April 27, 2009, Applicant filed its answer to the notice of opposition. A copy of Applicant’s answer is attached as Exhibit C.

In its answer, Applicant admitted that it has *not* used the Mark in connection with all of the goods listed in the application. Below are the relevant allegations from the notice of opposition and Applicant’s corresponding answers:

11. The application for the EDZ Mark covers well over 50 individual items of apparel products, including, but not limited to shirts, pants, caps, outerwear and hand-warmers.

ANSWER: The Applicant accepts this statement.

17. Upon information and belief, Applicant does not sell in the US all of the apparel products listed in the application for the EDZ Mark.

ANSWER: The Applicant accepts this statement.

II. The Application is Void Because Applicant Committed Fraud on the Trademark Office.

If fraud can be shown when procuring a registration, the entire registration or application is void. *Medinol Ltd. v. Nuro Vasx, Inc.*, 67 U.S.P.Q.2d 1205, 1208 (TTAB 2003); *see also Grand Canyon West Ranch LLC v. Hualapai Tribe*, 88 U.S.P.Q.2d 1501 (TTAB 2008) (opposition sustained because applicant had not used mark on all of the services listed in the application at the time of filing). Fraudulent procurement of a trademark application exists

when the Applicant "makes material representations of fact in its declaration which it *knows or should know* to be false or misleading." *Medinol*, 67 U.S.P.Q.2d at 1209 (emphasis added). It is not necessary to have any type of intent to commit the fraud. *Hachette Filipacchi Presse v. Elle Belle, Inc.*, 85 U.S.P.Q.2d 1090, 1094 (TTAB 2007).

It is crucial that the statements applicants make in a trademark application be truthful because, when examining the application, the Trademark Office does not have the ability to verify whether certain goods listed in an application are used in commerce. Truthful statements regarding the use of a mark in commerce "are essential to the integrity of the application and the registration process." *Grand Canyon*, 88 U.S.P.Q.2d at 1509.

Accordingly, an applicant cannot claim that it "overlooked" or was "unaware" that certain products listed in the application were not in use in US commerce. *Hachette*, 85 U.S.P.Q.2d at 1094; *Medinol*, 67 U.S.P.Q.2d at 1210. In this case, Applicant's Director, Mr. James Tilleard, appears to have prepared and filed the application. Mr. Tilleard signed the application's Declaration. (See Exhibit A.) Therefore, he knew or should have known which products bearing the mark were in use in US commerce.

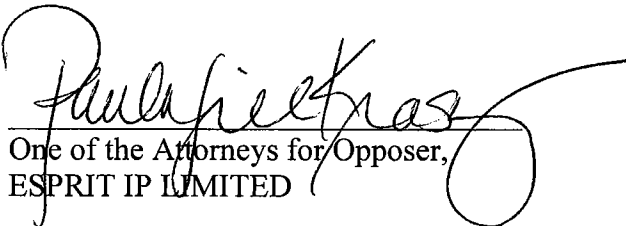
This case is analogous to *Hachette*, where the applicant filed a used based application and subsequently admitted that it had not used its mark in connection with a number of the apparel products listed in the identification. *Hachette*, 85 U.S.P.Q.2d at 1093. As is the case with Mr. Tilleard, the person who signed the Declaration in *Hachette* was an executive in the company. In the *Hachette* case, English was not the native language of the person signing the application's Declaration. *Id.* at 1094. Following *Medinol*, the Board nonetheless cancelled the registration, stating that "neither the identification of goods nor the statement of use itself was lengthy, highly technical, or otherwise confusing." *Id.* The executive who signed the application "was clearly in

a position to know (or to inquire) as to the truth of the statements" in the application, as is the case here. *Id.*

III. CONCLUSION

Applicant admitted in its answer to the notice of opposition that it is not using the Mark in connection with all of the goods listed in the application, which was based, in part, on actual use. Applicant also signed a Declaration stating that the information set forth in the application is true. The Declaration states that the consequences of willful false statements are: (i) a fine; (ii) imprisonment; (iii) a fine and imprisonment; and (iv) rendering the application invalid. Based on these facts, Opposer respectfully requests that the Board enter judgment on the pleadings, sustain this opposition in favor of Opposer, and render application Serial No. 77518568 void.

Respectfully submitted,


One of the Attorneys for Opposer,
ESPRIT IP LIMITED

Date: May 13, 2009

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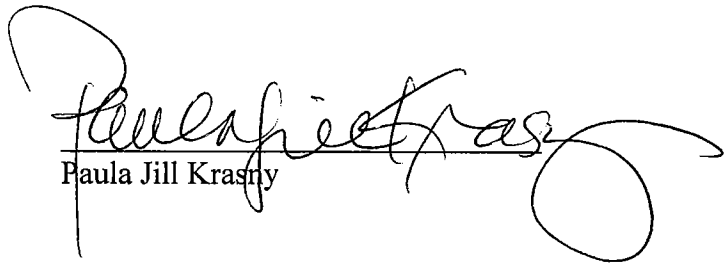
CERTIFICATE OF MAILING

The undersigned certifies that the foregoing **Motion for Judgment on the Pleadings** is being filed electronically via the Electronic System for Trademark Trials and Appeals (ESTTA)

with a copy sent via **FEDEX** to:

James Tilleard
Mellbeck Ltd.
The Old Sorting Office
92 High Street
Mayport CA156BE
United Kingdom

on this 13th day of May, 2009.



Paula Jill Krasny

CHIDMS1/2704748.1

COMMUNICATE VIA EMAIL : Yes

FEE INFORMATION

NUMBER OF CLASSES : 1

FEE PER CLASS : 275

*TOTAL FEE PAID : 275

SIGNATURE INFORMATION

* SIGNATURE : /james tilleard/

* SIGNATORY'S NAME : James Tilleard

* SIGNATORY'S POSITION : Director

* DATE SIGNED : 07/10/2008

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 77518568

Filing Date: 07/10/2008

To the Commissioner for Trademarks:

MARK: EDZ (stylized and/or with design, see mark)

The literal element of the mark consists of EDZ.

The applicant is not claiming color as a feature of the mark. The mark consists of The words 'EDZ' & oval motif .

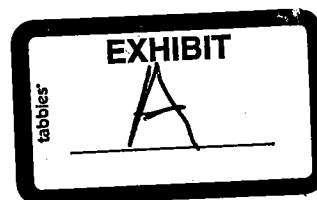
The applicant, Mellbeck Ltd, EDZ, a limited liability company legally organized under the laws of United Kingdom, having an address of

The Old Sorting Office, 92 High Street

Maryport CA156BE

United Kingdom

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051



et seq.), as amended.

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 025: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Belts; Bibs not of cloth or paper; Caps; Children's and infants' cloth bibs; Children's cloth eating bibs; Cloth bibs; Cloth bibs for adult diners; Cloth bibs for use by senior citizens or physically- or mentally-challenged persons; Cloth diapers; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing, namely, arm warmers; Clothing, namely, folk costumes; Clothing, namely, hand-warmers; Clothing, namely, khakis; Clothing, namely, knee warmers; Clothing, namely, neck tubes; Clothing, namely, thobes; Clothing, namely, wrap-arounds; Corsets; Dusters; Foulards; Hoods; Infant and toddler one piece clothing; Infant cloth diapers; Jerseys; Leather belts; Mantles; Mufflers; Non-disposable cloth training pants; Paper hats for use as clothing items; Parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; Perspiration absorbent underwear clothing; Shifts; Short sets; Shoulder wraps; Swaddling clothes; Ties; Tops; Travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; Triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; Underarm clothing shields; Wearable garments and clothing, namely, shirts; Wraps

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 025, the mark was first used at least as early as 01/15/1997, and first used in commerce at least as early as 01/15/1997, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) EDZ spring summer 2008 catalogue.

Original PDF file:

[spec-8925119655-071713488 . EDZ cat Spring 08.pdf](#)

Converted PDF file(s) (4 pages)

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

Based on Foreign Registration: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and submits a copy of United Kingdom registration number 2457518, registered 07/05/2008 with a renewal date of 07/05/2008 and an expiration date of 07/05/2018, and translation thereof, if appropriate. 15 U. S.C. Section 1126(e), as amended.

Original PDF file:

[reg-8925119655-071713488 . Certificate.pdf](#)

Converted PDF file(s) (1 page)

[Foreign Registration-1](#)

Correspondence Information: Mr James Tilleard (Director)

The Old Sorting Office, 92 High Street
Maryport CA156BE, United Kingdom
0044 1900 810260(phone)
0044 1900 810260(fax)
info@edz.biz (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /james tilleard/ Date Signed: 07/10/2008

Signatory's Name: James Tilleard

Signatory's Position: Director

RAM Sale Number: 6533

RAM Accounting Date: 07/10/2008

Serial Number: 77518568

Internet Transmission Date: Thu Jul 10 07:56:28 EDT 2008

TEAS Stamp: USPTO/FTK-89.251.196.55-2008071007562888

2424-77518568-40076f96afeb7f5eeb11e33409

eff88a193-CC-6533-20080710071713488375



TRADE MARKS REGISTRY



REGISTRATION CERTIFICATE

Trade Marks Act 1994 of

Great Britain and Northern Ireland

The mark shown below has been registered under No. 2457518 as of the date 05 June 2007.



The mark has been registered in respect of:

Class 25:

All types of apparel

In the name of Mellbeck Ltd

Signed this day at my direction

IAN FLETCHER, REGISTRAR

DATE 4 July 2008

UK Intellectual Property Office is an operating name of the Patent Office



EDZ

From the UK 0870 4106112
0044 (0)1900 810260
info@edz.biz
www.edz.biz

Base Layers

Midlayers

Windproofs

Accessories

Spring - Summer 08



Wicking Base Layers

- Wicks moisture
- Stops skin sticking to linings
- Prevents chafing
- Easy to wash
- Quick drying

Touring

These work over a wide range of temperatures which makes them ideal for long trips, the material prevents chafing and rubbing. Easy to wash, simply rinse out at night and these will be dry by morning.

Racing

Easy to get in and out race leathers, stops sticking to linings, sweat is wicked away through the fabric which dries very quickly.



Moto-cross & Enduro

Wicking Base Layers manage moisture, dry quickly and provide a thermal layer between stages.

Everyday Riding

Whether you wear leather or textiles these will stop skin sticking to linings, make getting in and out of gear easier and prevent chafing.



Men's Sports Base Layers

Undersuit	XS-XXXL	£40.00
T-shirt	XS-XXL	£15.00
Crew Neck Shirt	XS-XXXL	£20.00
Zip Neck Shirt	XS-XXL	£25.00
Leggings	XS-XXXL	£20.00

Ladies Sports Base Layer

One piece	Size 8 - 16	SRP £40.00
Crew top	Size 8 - 18	SRP £20.00
Leggings	Size 8 - 18	SRP £20.00

Wicking Base Layers Merino Base Layers

Wool is an amazingly complex natural fibre that insulates, regulates temperature and is highly absorbent. EDZ Merino base layers are made from the finest merino wool which is soft next to the skin and comfortable to wear. These are easy to live with too, machine washable, shrink resistant and durable.



- Absorbent
- Breathable
- Insulating
- Regulates temperature
- Stores heat
- Cools
- Antibacterial

100% merino wool
200g weight
Machine washable
Shrink resistant

Men's Crew top	XS - XXL
Men's Leggings	XS - XXL
Women's Crew top	8 - 16
Women's Leggings	8 - 16
SRP	£35.00

Midlayer thermal micro-fleece

Sizes XS - XXL
Ladies 8 - 14
SRP £25.00



These are designed to replace 'Michelin man' layering which is when you put on as many layers on as will fit under your jacket, probably still get cold and loose all circulation to the extremities!

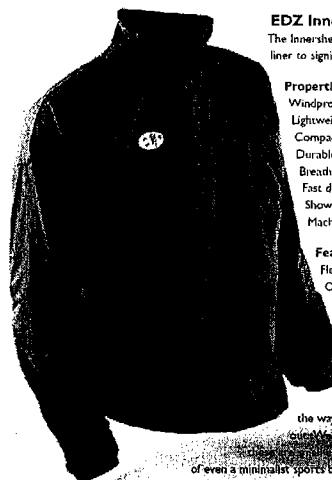
The EDZ Microfleece midlayer has good thermal properties but is thin enough to wear comfortably under a jacket and if worn in conjunction with a base layer, provides very efficient thermal layering to retain body heat. If your jacket is porous to air then wear an EDZ innershell over the midlayer / baselayer to prevent cold air displacing the warm air next to your skin.

The material has good wicking properties, is fast drying and easy to wash. Although the EDZ midlayer has a soft feel these are very durable and the fabric will maintain its appearance after many washes.

These look great too with nice styling details adding to the functionality of the garment.

Innershell under trousers

Weights only 80gms
Sizes S - XXL
SRP £30.00
Colour Black



EDZ Innershell

The Innershell is worn as a thin, breathable windproof liner to significantly reduce wind chill.

Properties

Windproof
Lightweight (3oz / 90gms)
Compact
Durable
Breathable
Fast drying
Shower proof
Machine washable

Features

Fleece lined collar
Offset zip
Perrex Microlight material
Stuff bag

Summer Riding

With the Innershell there is no need to freeze on the way home from a summer ride. Most people's jackets are of even a minimalist sports bike so that when the air temperature drops it is there ready to put on.

Innershell jacket

Weights only 90gms
Sizes XS - XXL
SRP £40.00
Colour Black

Winter Riding

In cold conditions the Innershell eliminates the need for bulky layers as it effectively stops cold air displacing the warm air in your clothing.

Touring

The Innershell takes up little space and increases layering options which is useful when covering large distances in varying temperatures. On arriving at ones destination the Innershell also serves as a lightweight windproof top.

Innershell as a windcheater

The Innershell is a universal performance windproof shell in its own right and is suitable for activities such as cycling, mountain biking, orienteering, running, golf and walking.



Packs into the smallest of spaces so it's there when needed.

EDZ Sports Base Layer balaclava

Suitable for hot & cold conditions. Sports Base Layer fabric wicks moisture, is quick drying with good thermal properties, an alternative to silk.

RRP £10.00

EDZ thermal balaclava

Thin microfibre fleece balaclava which has good thermal properties for colder conditions.

RRP £10.00

EDZ Helmet liner.

Designed to keep your helmet clean and manage moisture. Sports Base Layer fabric wicks moisture, is quick drying with good thermal properties.

Colours: Black only

RRP £10.00

EDZ all season Multi-tube

Sports Base Layer multi-tube can be worn in hot and cold conditions. Wicks moisture and moisture. Long design enables it to be turned into hat, balaclava, head band etc.

Colours: Solid: Black, Olive green, Army green, red & white, black & white, blue & white, olive & white.

RRP £10.00

EDZ lightweight thermal neck warmer

Soft 165gm microfibre neck warmer which is thin but warm enough for the job & long enough to pull up over your nose and ears while still keeping your neck covered.

RRP £10.00

EDZ thermal neck warmer

A soft 300 gm micro-fleece neck warmer for colder conditions & long enough to pull up over nose and ears while still keeping neck covered.

RRP £10.00

EDZ windproof neck warmer.

Fixed design made from soft Microfleece combined with a windproof breathable membrane.

RRP £15.00

EDZ Sports Base Layer liner gloves

Seamless all season Sports Base Layer with added Lycra for stretch, wicks moisture, is quick drying with good thermal properties, an alternative to silk.

RRP £7.50

EDZ thermal gloves.

165gm micro fleece thermal liner gloves for colder conditions.

RRP £6.00

EDZ thermal boot socks

Loop pile thermal boot sock made from 80% wool & 10% polyamide, padded all the way round including shin and calf area.

RRP £10.00

EDZ have developed a range which combines to create a versatile layering system for use over varying temperatures. The advantage of this system is it is not bulky and it allows the wearer to vary combinations to suit the conditions.

Hot conditions
Sports Base Layer

Mild conditions
Sports Base Layer or Merino Base Layer
+ Innershell if required

Cold conditions
Sports Base Layer or Merino Base Layer
+ midlayer + Innershell if required

Base Layers

A base layer can be worn all year round, insulating in cold conditions and then in hot conditions managing moisture & also preventing skin rubbing so it feels.

EDZ offer two types of Base Layer

Sports Base Layer is a performance polyester base layer which can be worn over a wide spectrum of temperatures from hot to cold. This is fast drying and if rinsed out at night will be dry by morning.

Merino Base Layer is a 100% wool base layer with the natural temperature regulating properties of wool.

Which Base Layer to choose?

The Sports Base Layer works across a wide range of temperatures & would be the first choice in warmer conditions whereas the Merino will give a higher level of insulation when it is cold. The Sports Base Layer is the more versatile of the two types.

EDZ Midlayer

The midlayer is worn over a base layer when additional insulation is required and is a thin microfibre fabric that has good insulation properties with out being bulky.

EDZ Innershell

The innershell is a very thin microfibre liner worn under the midlayer to reduce bulk and increase the efficiency of the system.

BASE LAYER

Primary insulating layer worn next to the skin to trap heat from the body.

MIDLAYER

Additional insulation layer worn over the base layer for extra warmth.

INNERSHELL

Windproof liner worn over base layer and midlayer to reduce cold air coming through outer layers.

OUTER LAYER

Leather or canvas outer layers provide the first line of protection from the elements.

Accessories
The EDZ three layer system





Base Layers

Midlayers

Windproofs

Accessories

EDZ

From the UK 0870 4106112

0044 (0)1900 810260

info@edz.biz

www.edz.biz

Spring - Summer 08

Wicking Base Layers

- Wicks moisture
- Stops skin sticking to linings
- Prevents chafing
- Easy to wash
- Quick drying

Touring

These work over a wide range of temperatures which makes them ideal for long trips, the material prevents chafing and rubbing. Easy to wash, simply rinse out at night and these will be dry by morning.

Racing

Easy to get in and out race leathers, stops sticking to linings, sweat is wicked away through the fabric which dries very quickly.

Moto-cross & Enduro

Wicking Base Layers manage moisture, dry quickly and provide a thermal layer between stages.

Everyday Riding

Whether you wear leather or textiles these will stop skin sticking to linings, make getting in and out of gear easier and prevent chafing.

Men's Sports Base Layers

Undersuit	XS-XXXL	£40.00
T-shirt	XS-XXXL	£15.00
Crew Neck Shirt	XS-XXXL	£20.00
Zip Neck Shirt	XS-XXXL	£25.00
Leggings	XS-XXXL	£20.00

Ladies Sports Base Layer

One piece	Size 8 - 16	SRP £40.00
Crew top	Size 8 - 18	SRP £20.00
Leggings	Size 8 - 18	SRP £20.00

Wicking Base Layers Merino Base Layers

Wool is an amazingly complex natural fibre that insulates, regulates temperature, and is highly absorbent. EDZ Merino base layers are made from the finest merino wool which is soft next to the skin and comfortable to wear. These are easy to live with too, machine washable, shrink resistant and durable.

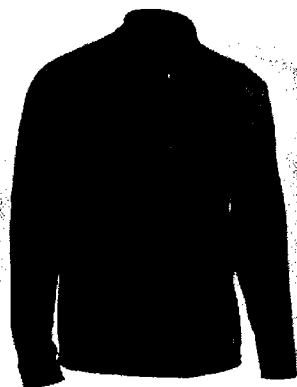
- Absorbent
- Insulating
- Regulates temperature
- Stores heat
- Cools
- Antibacterial

100% merino wool
200g weight
Machine washable
Shrink resistant

Men's Crew top	XS - XXL
Men's Leggings	XS - XXL
Women's Crew top	8 - 16
Women's Leggings	8 - 16
SRP	£25.00

Midlayer thermal micro-fleece

Sizes XS - XXL
Ladies 8 - 14
SRP £25.00



These are designed to replace 'Michelin man' layering which is when you put on as many layers on as will fit under your jacket, probably still get cold and loose all circulation to the extremities!

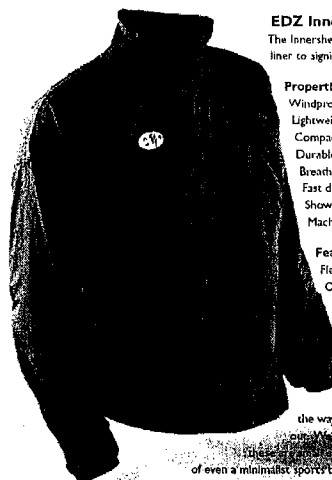
The EDZ Microfleece midlayer has good thermal properties but is thin enough to wear comfortably under a jacket and if worn in conjunction with a base layer, provides very efficient thermal layering to retain body heat. If your jacket is porous to air then wear an EDZ innershell over the midlayer / base layer to prevent cold air displacing the warm air next to your skin.

The material has good wicking properties, is fast drying and easy to wash. Although the EDZ midlayer has a soft feel these are very durable and the fabric will maintain its appearance after many washes.

These look great too with nice styling details adding to the functionality of the garment.

Innershell under trousers

Weights only 80gms
Sizes S - XXL
SRP £30.00
Colour Black



EDZ Innershell

The Innershell is worn as a thin, breathable windproof liner to significantly reduce wind chill.

Properties

Windproof
Lightweight (3oz / 90gms)
Compact
Durable
Breathable
Fast drying
Shower proof
Machine washable

Features

Fleece lined collar
Offset zip
Pertex Microlight material
Stuff bag

Summer Riding

With the Innershell there is no need to freeze on the way home from a summer ride. The Innershell is a thin, breathable windproof liner to significantly reduce wind chill. It is even a minimalist sports bike so that when the air temperature drops it is there ready to put on.

Innershell jacket

Weights only 90gms
Sizes XS - XXL
SRP £40.00
Colour Black

Winter Riding

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Touring

The Innershell takes up little space and increases layering options which is useful when covering large distances in varying temperatures. On arriving at ones destination the Innershell also serves as a lightweight windproof top.

Innershell as a windcheater

The Innershell is a universal performance windproof shell in its own right and is suitable for activities such as cycling, mountain biking, orienteering, running, golf and walking.



Packs into the smallest of spaces so it's there when needed



EDZ Sports Base Layer balaclava

Suitable for hot & cold conditions. Sports Base Layer fabric wicks moisture, is quick drying with good thermal properties, an alternative to silk.
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EDZ thermal balaclava

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RRP £10.00



EDZ Helmet liner.

Designed to keep your helmet clean and manage moisture. Sports Base Layer fabric wicks moisture, is quick drying with good thermal properties.
Colours: Black only
RRP £10.00

EDZ all season Multi-tube

Sports Base Layer multi-tube can be worn in hot and cold conditions. Works moisture and insulates. Long design enables it to be turned into hat, balaclava, head cap, head band etc.
Colours: Sage, Black, Olive green
Arab presented in white, black & white, blue & white, olive & white.
RRP £10.00



EDZ lightweight thermal neck warmer

Soft 165gm microfibre neck warmer which is thin but warm enough for the job & long enough to pull up over your nose and ears while still keeping your neck covered.
RRP £10.00

EDZ thermal neck warmer

A soft 300 gm microfibre neck warmer for colder conditions & long enough to pull up over nose and ears while still keeping neck covered.
RRP £10.00



EDZ windproof neck warmer.

Fixed design made from soft Microfibre combined with a windproof breathable membrane.
RRP £15.00

EDZ Sports Base Layer liner gloves

Seamless all season Sports Base Layer with added Lycra for stretch, wicks moisture, is quick drying with good thermal properties, an alternative to silk.
RRP £7.50



EDZ thermal gloves.

165gm microfibre thermal liner gloves for colder conditions.
RRP £6.00

EDZ thermal boot socks

Loop pile thermal boot sock made from 80% wool & 10% polyamide, padded all the way round including shin and calf area.
RRP £10.00



Accessories

The EDZ Three Layer System

EDZ have developed a range which combines to create a versatile layering system for use over varying temperatures. The advantage of this system is it is not bulky and it allows the wearer to vary combinations to suit the conditions.

Hot conditions

Sports Base Layer

Mild conditions

Sports Base Layer or Merino Base Layer + Innershell if required

Cold conditions

Sports Base Layer or Merino Base Layer + midlayer + Innershell if required

Base Layers

A base layer can be worn all year round, insulating in cold conditions and then in hot conditions managing moisture & also preventing skin itching so feelings.

EDZ offers two types of Base Layer.

Sports Base Layer is a performance polyester base layer which can be worn over a wide spectrum of temperatures from hot to cold. This is fast drying and if mixed out at night will be dry by morning.

Merino Base Layer is a 100% wool base layer with the natural temperature regulating properties of wool.

Which Base Layer to choose?

The Sports Base Layer works across a wide range of temperatures & would be the first choice in warmer conditions whereas the Merino will give a higher level of insulation when it is cold. The Sports Base Layer is the more versatile of the two types.

EDZ Midlayer

The midlayer is worn over a base layer when additional insulation is required and is a thin microfibre fabric that has good insulation properties with out being bulky.

EDZ Innershell

Innershell is a very thin microfibre liner worn over a base layer to reduce cold air coming through outer layers and increase the efficiency of the system.

BASE LAYER

Primary insulating layer worn next to the skin to trap heat from the body.

MIDLAYER

Additional insulation layer worn over the base layer for extra warmth.

INNERSHELL

Windproof liner worn over base layer and midlayer to reduce cold air coming through outer layers.

OUTER LAYER

Leather or textile outer layers provide the first line of protection from the elements.





ESTTA Tracking number:

ESTTA273738

Filing date:

03/23/2009

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Esprit IP Limited
Granted to Date of previous extension	04/01/2009
Address	Offshore Incorporations Centre P.O. Box 957 Road Town, Tortola, VIRGIN ISLANDS, BRITISH

Attorney information	Paula Jill Krasny Baker & McKenzie LLP 130 E. Randolph St. Chicago, IL 60601 UNITED STATES paula.j.krasny@bakernet.com Phone: 312-861-2822
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Applicant Information

Application No	77518568	Publication date	12/02/2008
Opposition Filing Date	03/23/2009	Opposition Period Ends	04/01/2009
International Registration No.	NONE	International Registration Date	NONE
Applicant	Mellbeck Ltd The Old Sorting Office, 92 High Street Maryport, CA156BE UNITED KINGDOM		

Goods/Services Affected by Opposition

<p>Class 025. First Use: 1997/01/15 First Use In Commerce: 1997/01/15</p> <p>All goods and services in the class are opposed, namely: (Based on Use in Commerce) Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Belts; Bibs not of cloth or paper; Caps; Children's and infants' cloth bibs; Children's cloth eating bibs; Cloth bibs; Cloth bibs for adult diners; Cloth bibs for use by senior citizens or physically- or mentally-challenged persons; Cloth diapers; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing, namely, arm warmers; Clothing, namely, folk costumes; Clothing, namely, hand-warmers; Clothing, namely, khakis; Clothing, namely, knee warmers; Clothing, namely, neck tubes; Clothing, namely, thobes; Clothing, namely, wrap-arounds; Corsets; Dusters; Foulards; Hoods; Infant and toddler one piece clothing; Infant cloth diapers; Jerseys; Leather belts; Mantles; Mufflers; Non-disposable cloth training pants; Paper hats for use as clothing items; Parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; Perspiration absorbent underwear clothing; Shifts; Short sets; Shoulder wraps; Swaddling clothes; Ties; Tops; Travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; Triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; Underarm clothing shields; Wearable</p>
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garments and clothing, namely, shirts; Wraps
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	3395651	Application Date	07/30/2002
Registration Date	03/11/2008	Foreign Priority Date	NONE
Word Mark	EDC BY ESPRIT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 2004/00/00 First Use In Commerce: 2004/00/00 coin cases Class 025. First use: First Use: 2004/00/00 First Use In Commerce: 2004/00/00 women's wearing apparel, namely, dresses, coats, shorts, shirts, pants, sweaters, jackets, t-shirts, blouses, knit tops, halters, smock tops, vests, wind resistant jackets, sweatshirts, sweatpants, belts, caps, hats, gloves, shawls, scarves, leggings, denim pants, knit pants and skirts		

U.S. Registration No.	3592935	Application Date	02/02/2004
Registration Date	03/17/2009	Foreign Priority Date	NONE
Word Mark	EDC		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1998/00/00 First Use In Commerce: 2004/00/00 retail store services, electronic catalog services, online retail store services and computerized online ordering services featuring clothing, clothing accessories, bags, purses, leather accessories

U.S. Application No.	77239800	Application Date	07/26/2007
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	EDC
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Design Mark	
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Description of Mark	NONE
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Goods/Services	<p>Class 003. First use: Lipstick holders</p> <p>Class 006. First use: Metal key chains and key fobs</p> <p>Class 009. First use: Cellular phone cases, eyeglasses, sunglasses, spectacles, frames and cases for spectacles</p> <p>Class 016. First use: Passport holders; check cases; bags made of plastic or paper for holding stationery; cases for holding loose-leaf diaries; stationery-type portfolios</p> <p>Class 018. First use: Handbags, shoulder bags, evening bags, tote bags, briefcase- type portfolios, pocketbooks, shopping bags made of canvas and leather, knapsacks, daypacks designed to carry goods, clothes, and school accessories; backpacks, schoolbags, book bags, brief cases, wallets, purses, coin purses, clutch purses, credit cardcases, cosmetic cases sold empty, toiletry bags sold empty, business card holders, agenda cases, luggage, suitcases, duffel bags, soft luggage and overnight bags of any size or dimension, garment bags for travel, wheeled luggage, carry-on cases, hard- sided luggage; bags for holding baby carriage accessories and baby accessories</p> <p>Class 020. First use: Non-metal key chains and key fobs</p> <p>Class 022. First use: Laundry bags; garment bags for storage</p> <p>Class 025. First use: Men's wearing apparel, namely, shirts, ties, pants, sweaters, jackets, coats, suits, shorts, t-shirts, sweatshirts, sweatpants, undershirts, underwear, belts,</p>
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	caps, hats, vests, scarves, gloves, swimwear, rainwear; women's wearing apparel, namely, dresses, coats, mufflers, stockings, pajamas, panties, bras, underwear, headbands, shorts, jogging suits, sweatshirts, sweatpants, ski jackets, ski pants, rainwear, raincoats, robes, nightgowns, swimwear, bathing suits, cover-ups, shirts, pants, sweaters, jackets, coats, suits, shorts, t-shirts, undershirts, blouses, knit tops, halters, smock tops, hosiery, socks, tights, leggings, leotards; children's wearing apparel, namely, dresses, coats, mufflers, stockings, pajamas, panties, underwear, lingerie, headbands, shorts, jogging suits, sweatshirts, sweatpants, ski jackets, ski pants, rainwear, raincoats, robes, nightgowns, swimwear, shirts, pants, sweaters, jackets, coats, suits, shorts, t-shirts, undershirts, blouses, knit tops, halters, smock tops, undershirts, underwear, belts, caps, hats, vests, scarves, gloves, hosiery, socks, tights, leggings, leotards; men's, women's and children's footwear, headwear Class 034. First use: Cigarette cases not made of precious metal
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Attachments	78148900#TMSN.gif (1 page)(bytes) 78361067#TMSN.jpeg (1 page)(bytes) 77239800#TMSN.jpeg (1 page)(bytes) Mellbeck Ltd opposition.pdf (5 pages)(149496 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Paula Jill Krasny/
Name	Paula Jill Krasny
Date	03/23/2009

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

Applicant: Mellbeck Ltd.

Serial No.: 77518568

Filing Date: July 10, 2008

Mark: 

Published: December 2, 2008

Opposition No. _____

Esprit IP Limited,


Opposer,

v.

Mellbeck Ltd.

Applicant.

NOTICE OF OPPOSITION

In the matter of Application Serial No. 77518568 for registration of the trademark 
in International Class 25 (the “**EDZ Mark**”) by Mellbeck Ltd. (“**Applicant**”), Esprit IP Limited,
a British Virgin Islands corporation having a business address at Offshore Incorporations Centre,
P.O. Box 957, Road Town, Tortola, British Virgin Islands (“**Opposer**”), believes that it will be
damaged by the registration of the EDZ Mark and, therefore, opposes registration on the
following grounds:

1. Opposer's brands appear on a wide variety of lifestyle fashion items, including clothing, outerwear and accessories.
2. One of Opposer's most popular and famous brands is EDC.
3. Opposer owns trademark Registration No. 3395651 for its EDC Logo set forth below:



(the "**EDC Logo**"). Because it was filed on an intent to use basis, the priority filing date for this registration is July 30, 2002.

4. The registration for the EDC Logo covers an array of clothing items, including, but not limited to, shirts, pants, outerwear, hats and gloves.
5. Opposer has used the EDC Logo continuously in US commerce since 2004 and therefore has not abandoned it.
6. Opposer also owns Registration No. 3592935 for the mark EDC for retail store and online retail store services in the fields of clothing, accessories and other related items (the "**EDC Registration.**")
7. Because the EDC Registration was filed on an intent to use basis, its priority date is the February 2, 2004 filing date.
8. Opposer has used the EDC Registration continuously in US commerce since at least as early as 2004 and therefore has not abandoned it.
9. Opposer also owns Application No. 77/239800 for the mark EDC for a wide array of apparel and related items. This application was filed on an intent to use basis on July 26,

2007, and a notice of allowance has since issued. (Registration No. 3395651 for the EDC Logo, Registration No. 3592935 for the EDC Registration and Application No. 77/239800 for the EDC mark hereinafter collectively will be referred to as the “*EDC Mark*.”)

10. On July 10, 2008, Applicant filed, in part, under 15 U.S.C. §§ 1051(a), an application to register the EDZ Mark depicted below:



11. The application for the EDZ Mark covers well over 50 individual items of apparel products, including, but not limited to shirts, pants, caps, outerwear and hand-warmers.

12. The dominant features of both Opposer's EDC Logo and Applicant's EDZ Mark consist of three letters set within an oblong oval.

13. In the case of Applicant's mark, the three letters are EDZ.

14. In the case of Opposer's mark, the three letters are EDC.

15. Applicant's mark – EDZ – sounds like Opposer's mark – EDC.

16. Applicant's and Opposer's respective marks look and sound alike.

17. Upon information and belief, Applicant does not sell in the US all of the apparel products listed in the application for the EDZ Mark.

18. The EDC Mark has priority over the EDZ Mark.

19. Because Opposer's EDC Mark and Applicant's EDZ Mark are similar in appearance, sound and connotation, and because the parties' respective goods are identical, similar or highly related, Applicant's EDZ Mark so resembles Opposer's EDC Mark as to be likely to cause confusion, or to cause mistake, or to deceive, in violation of 15 U.S.C. §1052(d) .

20. The registration of Applicant's EDZ Mark will dilute Opposer's famous EDC Mark and lessen the ability of the EDC Mark to distinguish Opposer as the source of the products and services offered under its EDC Mark, in violation of 15 U.S.C. § 1125(c).

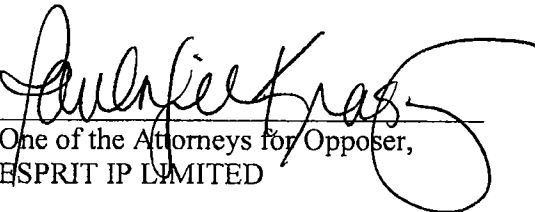
21. Upon information and belief, at the time of filing its application, Applicant was not, and as of the date of this Notice of Opposition, Applicant is not, using in US commerce the EDZ Mark on each and every product listed in its application, in violation of Section 1(a) of the Trademark Act, and therefore has committed fraud on the Trademark Office.

22. Based on the foregoing, the registration of the EDZ Mark, will cause injury, harm and damage to Opposer.

WHEREFORE, Opposer, Esprit IP Limited, prays that this Opposition be sustained and registration of Application Serial No. 77518568 be denied.

Please charge the statutory filing fee of \$300.00 to Deposit Account No. 501649. If this amount is insufficient for any reason, please charge any shortfall, or missing or excess fees, to Deposit Account No. 501649.

Respectfully submitted,


One of the Attorneys for Opposer,
ESPRIT IP LIMITED

Date: March 23, 2009

BAKER & McKENZIE LLP
Paula Jill Krasny
John C. Filosa
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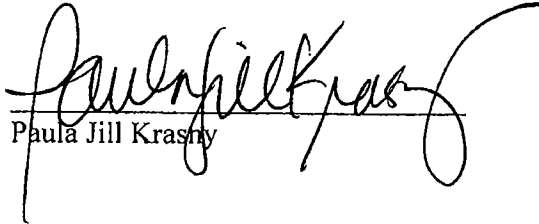
CERTIFICATE OF MAILING

The undersigned certifies that the foregoing **Notice of Opposition** is being filed electronically via the Electronic System for Trademark Trials and Appeals (ESTTA)

with a copy sent via **FEDEX** to:

James Tilleard
Mellbeck Ltd.
The Old Sorting Office
92 High Street
Mayport CA156BE
United Kingdom

on this 23th day of March, 2009.



Paula Jill Krasny

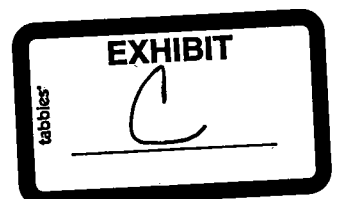
CHIDMS1/2692729.1

ESTTA Tracking number: **ESTTA280312**

Filing date: **04/27/2009**

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

Proceeding	91189412
Party	Defendant Mellbeck Ltd
Correspondence Address	James Tilleard Mellbeck Ltd. The Old Sorting Office, 92 High Street Mayport CA 156BE, UNITED KINGDOM
Submission	Answer
Filer's Name	Mr James Tilleard
Filer's e-mail	james@edz.biz
Signature	/J Tilleard/
Date	04/27/2009
Attachments	77518568_answer_01.pdf (3 pages)(52703 bytes)



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

Applicant: Mellbeck Ltd

Serial No: 77518568

Filing Date: July 10 2008

Mark:



Published: December 2 2008

Opposition No. 91189412

Mellbeck Ltd

Applicant

v.

Esprit IP Ltd

Opposer

ANSWER TO OPPOSITION

In the matter of Application Serial number 77518568 for the registration of the trademark



in international class 25 (the "**EDZ**" Mark) by Mellbeck

Ltd. ("**Applicant**") and Esprit IP Limited ("**Opposer**"). We believe that the

Opposers grounds for opposition are unfounded for the following reasons;

1. The Applicant accepts this statement.
2. The Applicant accepts this statement.
3. The Applicant accepts this statement.
4. The Applicant accepts this statement.
5. The Applicant accepts this statement.
6. The Applicant accepts this statement.
7. The Applicant accepts this statement.
8. The Applicant accepts this statement.
9. It should also be noted that the EDZ mark was first introduced in 1997 and has been in continuous use since then.
10. The Applicant accepts this statement.
11. The Applicant accepts this statement.
12. The opponents are claiming that the edc logo and the EDZ mark are similar in shape and appearance. This is not the case as the EDZ mark is a regular oval shape while the edc logo is more elongated, almost cigar shape. See below;



The characters in the EDZ mark are uppercase & of a distinctive stylised design whereas the edc letters resemble a commonly used lower case font similar to Arial. We submit that the two are so dissimilar that it is not possible to confuse one with the other.

13. The Applicant accepts this statement.
14. The Applicant accepts this statement.
15. We deny the opponents claim that the applicants mark EDZ sounds like EDC, EDZ is pronounced in the UK English fashion as in 'E. D. Zed' like the Z in Zeppelin and were it inadvertently pronounced with a 'zee' sound it is unlikely to be confused with the 'see' sound in EDC.
16. The applicants mark EDZ clearly sounds and looks distinctively different to the Opposers mark EDC.
17. The Applicant accepts this statement

18. We submit that the EDZ mark was first introduced in 1997 and has been in continuous use since then.

19.1 On both sound and visual recognition there are obvious differences between the EDZ and EDC marks which clearly differentiates them apart and as a consequence EDZ and EDC can not be confused or have connotations.

19.2 The Applicant refutes the Opposers broad claim that we sell identical or similar goods' other than that we produce various items of apparel as many other companies also do.

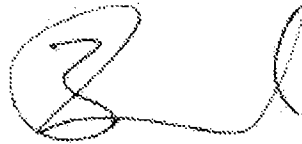
20. As the EDC and EDZ marks are so distinctively different in appearance and sound and are unlikely to be confused we refute the suggestion that the use of the EDZ mark will have any detrimental effect on the Opposer.

21. The Applicant denies that they have knowingly filed their application in anything other than the correct manner.

23. In view of the distinctive differences between the Opposers EDC mark and the Applicants EDZ mark the Opposer has no reasonable cause to claim that they are likely to be caused injury, harm or damage from this application being accepted.

WHEREFORE, Applicant Mellbeck Ltd, prays that this opposition be dismissed and the registration of Application Serial No. 77518568 be allowed.

Respectfully submitted



James Tilleard
Director
MELLBECK LTD

Date April 27th 2009

Electronic signature /J Tilleard/

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