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Filing date: **05/29/2013**

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

Proceeding	91189474
Party	Defendant Bernadette Cooper and Joyce Irby
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Submission	Other Motions/Papers
Filer's Name	Bernadette Cooper
Filer's e-mail	klymaxxdivas@gmail.com
Signature	/Bernadette Cooper/
Date	05/29/2013
Attachments	Defendant Brief_Filing.pdf(57181 bytes) EXHIBIT 1-KLYMAXX Trademark Stipulated Settlement_Filing.pdf(982936 bytes)

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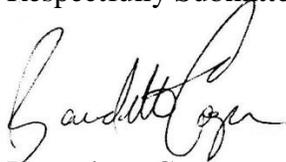
May 28, 2013

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

Re: DEFENDANT'S BRIEF
Opposition No.: 91189474
Serial No.: 77571759
Mark: KLYMAXX

Enclose please find Defendant's Brief and Certificate of Service on Plaintiff in the above proceeding.

Respectfully Submitted,



Bernadette Cooper

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

Cheryl Cooley,)	
)	Opposition No.: 91189474
Opposer,)	
)	Mark: KLYMAXX
v.)	
)	Serial No.: 77/571,759
Bernadette Cooper and)	
Joyce Irby)	
)	
Applicants.)	

DEFENDANT'S BRIEF

On September 3, 2012, Defendants, under 27 CFR §2.117(c), submitted a Motion to Suspend for Settlement Discussions with suspension granted and mailed September 6, 2013. On November 13, 2012, Plaintiffs, under 27 CFR §2.117(c), submitted a Motion to Suspend for Settlement Discussions with suspension granted and mailed on November 20, 2012. All parties were in discussions of a settlement agreement. (See Exhibit 1 Stipulation of Settlement)

Applicant Bernadette Cooper individually was amenable to withdrawing, with prejudice, her application for the Mark, KLYMAXX, under Serial Number 77/571/759. (See Exhibit 1 ¶ 1)

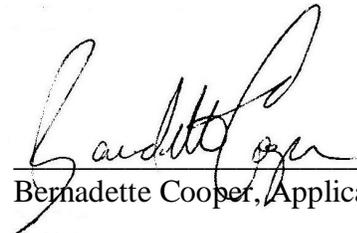
Applicant, Bernadette Cooper, individually and Opposer were amenable to being estopped from applying for registration of the mark, KLYMAXX. However, Applicants and Opposer were not estopped from applying for the mark: "KLYMAXX Featuring

Bernadette Cooper" or KLYMAXX Featuring Cheryl Cooley", OR KLYMAXX
Featuring Joyce Irby," etc. (See Exhibit 1 ¶ 2, 3)

Applicant, Bernadette Cooper and Opposer were amenable to the statement that each of the parties were original members of the recording and performing group known as KLYMAXX. All original members are entitled to the usage of the mark KLYMAXX, however, they are not entitled to any income each individually derives from usage of the title as described above.

At present time, applicant Bernadette Cooper, individually, agrees to the Stipulation of Settlement with Opposer, however, Co-Applicant Joyce Irby, individually, has refused the Stipulation of Settlement. Therefore, Applicants', collectively, can no longer represent their application for the Mark, KLYMAXX, under Serial Number 77/571, 759.

Dated: May 28, 2013


Bernadette Cooper, Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing:

DEFENDANT'S BRIEF

is being served upon Opposer by email addressed as follows:

Jack F. Sherer
jscherer@jfsny.com



Bernadette Cooper

May 28, 2013

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

Cheryl Cooley,)	
)	Opposition No.: 91189474
Opposer,)	
)	Mark: KLYMAXX
v.)	
)	Serial No.: 77/571,759
Bernadette Cooper and)	
Joyce Irby)	
)	
Applicants.)	

Stipulation of Settlement

It is hereby stipulated and agreed by and between the parties and their respective attorneys that the above matter is settled upon the following terms and conditions:

The Applicants, Bernadette Cooper and Joyce Irby, individually and collectively, hereby withdraw, with prejudice, their application for the Mark, KLYMAXX, under Serial Number 77/571,759

The Applicants and Opposer agree that Opposer, Cheryl Cooley, is estopped from applying for registration of the mark, KLYMAXX. However, Opposer is not estopped from applying for the following mark: “Klymaxx Featuring Cheryl Cooley”

The Applicants and Opposer agree that Applicants, Bernadette Cooper and Joyce Cooper, individually and collectively, are estopped from applying for registration of the mark, KLYMAXX. However, Applicants are not estopped from applying for the following mark: “Klymaxx Featuring Bernadette Cooper and/or Joyce Irby”.

Neither Bernadette Cooper and/or Joyce Irby, nor their agents, servants and/or

employees, may represent or state, directly or indirectly, whether in a “cease and desist” communication or otherwise to any third party, that Cheryl Cooper can not perform as “Klymaxx Featuring Cheryl Cooper”. Bernadette Cooper and Joyce Irby represent that they (individually and/or collectively) will not prevent or attempt to prevent, directly or indirectly, the advertising and promotion of any performance by Cheryl Cooper using the mark “Klymaxx Featuring Cheryl Cooper”.

Neither Cheryl Cooley, nor her agents, servants and/or employees, may represent or state, directly or indirectly, whether in a “cease and desist” communication or otherwise to any third party, that Bernadette Cooper and/or Joyce Irby can not perform as “Klymaxx featuring Bernadette Cooper and/or Joyce Irby.” Cheryl Cooper represents that Opposer will not prevent or attempt to prevent, directly or indirectly, the advertising and promotion of any performance by Applicants using the mark “Klymaxx Featuring Bernadette Cooper and/or Joyce Irby.”

In the event of a breach hereof by either party, the prevailing party shall be entitled to recover reasonable legal fees and damages as well as injunctive relief for any breach or anticipated breach.

It is understood and agreed that each of the parties hereto were original members of the recording and performing group known as *Klymaxx*. The parties further agree that no original and/or former member of *Klymaxx* has a greater right than any other original and/or former member of *Klymaxx* to the use of the KLYMAXX tradename, except as set forth hereinabove.

Dated: May , 2012

Bernadette Cooper, Applicant

Joyce Irby, Applicant

Jamie R. Sheldon, Esq.,
Attorney for Applicants

Cheryl Cooley, Opposer

Jack F. Scherer, Esq.
Attorney for Opposer

**SO ORDERED:
TRADEMARK TRIAL AND APPEAL BOARD**
