

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

gcp

Mailed: October 21, 2011

Opposition No. 91190736

K-Swiss Inc.

v.

CFRI-NCA Palladium Venture,
L.L.C.

By the Trademark Trial and Appeal Board:

Opposer's motion for summary judgment based on the doctrine of *res judicata* (filed August 1, 2011) is hereby granted as conceded.¹ See Trademark Rule 2.127(a) and Fed. R. Civ. P. 56.

Accordingly, judgment is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused.

¹ The Board notes that opposer did not plead, as a basis for opposition, that registration of the involved mark is barred by the doctrine of *res judicata*. While we recognize that a party may not obtain summary judgment on an unpleaded issue, see TBMP § 527.07(a) and cases cited therein, inasmuch as applicant has failed to respond to opposer's motion for summary judgment, including making any objection that the motion is based on an unpleaded issue, the Board deems opposer's notice of opposition to have been amended to allege *res judicata* as a pleaded matter. *Id.*