

ESTTA Tracking number: **ESTTA354069**

Filing date: **06/21/2010**

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

Proceeding	91194864
Party	Defendant Undivided Design, LLC
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Attachments	Undivided Design - Trademark - Answer to Notice of Opposition by H&M.pdf (4 pages)(21483 bytes)

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

H&M HENNES & MAURITZ AB,

Opposer,

vs.

UNDIVIDED DESIGN, LLC, ,

Applicant.

Opposition No.: 91194864

Application Serial No. 77/888,150

**ANSWER TO NOTICE OF OPPOSITION
BY H&M HENNES & MAURITZ AB**

UNDIVIDED DESIGN, LLC (“**Applicant**”), through counsel, submits this response in support of Application No. 77/888,150 and in response to the *Notice of Opposition*, dated May 12, 2010 (the “**Opposition**”), filed by H&M Hennes & Mauritz AB (“**H&M**”).

1. Applicant is in the developmental stage of producing a clothing line that will be marketed and sold under the label “UNDIVIDED”.

2. Applicant chose this label and this name because of the common meaning of the term “undivided,” *to wit*:

1. **undivided** - not parted by conflict of opinion; "presented an undivided front"
[united](#) - characterized by unity; being or joined into a single entity; "presented a united front"
2. **undivided** not shared by or among others; "undivided responsibility"
[unshared](#) - not shared
3. **undivided** - not divided among or brought to bear on more than one object or objective; "judging a contest with a single eye"; "a single devotion to duty"; "undivided affection"; "gained their exclusive attention"
[exclusive](#), [single](#)
[concentrated](#) - gathered together or made less diffuse; "their concentrated efforts"; "his concentrated attention"; "concentrated study"; "a narrow thread of concentrated ore"
4. **undivided** - not separated into parts or shares; constituting an undivided unit; "an undivided interest in the property"; "a full share"
[whole](#) - including all components without exception; being one unit or constituting the full amount or extent or duration; complete; "gave his whole attention"; "a whole wardrobe for the tropics"; "the whole hog"; "a whole week"; "the baby cried the whole trip home"; "a whole loaf of bread"

<http://www.thefreedictionary.com/undivided>.

3. Specifically, Applicant's branding is intended to evoke and connote unity, wholeness and/or one-ness.

4. H&M is a clothing retailer. Apparently, H&M operates a "department" in its retail stores which is labels "Divided." It appears, however, that H&M does not have a "Divided" brand and does not sell clothing under a "Divided" label. Rather, many different brands of clothing are sold in the departments of H&M's retail outlets.

5. Further, as described and denoted by U.S. Registration No. 3,476,969, H&M's mark is very specialized and particular in its font and appearance.

6. H&M's mark is the antonym or opposite of Applicant's branding and mark.

7. As more fully explained below, Applicant's mark is not likely to cause confusion, mistake or deception.

8. Applicant's proposed mark and H&M's marks are dissimilar in both appearance and sound.

9. The marks are complete opposites in connotation and meaning.

10. Because the words are opposites in meaning and connotation (*e.g.*, black versus white) they are not similar in commercial impression. In short, the marks are not likely to confuse customers.

11. H&M has not carried its burden, and cannot, to persuade the Board that consumers are likely to assume that H&M's marks "DIVIDED" and Applicant's mark "UNDIVIDED" indicate a single source for goods.

12. Even if the Board believes that applicant's mark "UNDIVIDED" will bring to mind H&M's marks, this Board and the courts have recognized that the fact that one mark may bring another mark to mind does not establish likelihood of confusion as to source. Rather, "[t]he very fact of calling to mind may indicate that the mind is distinguishing, rather than being confused by, two marks." In re Ferrero, 479 F.2d 1395, 1397 (CCPA 1973).

13. Consumers can differentiate between marks that have familiar dictionary meanings that are different from each other, even when the marks are similar in appearance and/or phonetics. See, e.g., R. J. Reynolds Tobacco Co. v. Am Brands, Inc., 493 F.2d 1235, 1239 (CCPA 1974) (finding that the marks “ADVANCE” and “VANTAGE” were sufficiently dissimilar); Singer Co. v. Unishops, Inc., 421 F.2d 1371, 1372 (CCPA 1970) (holding that the marks “SINGER” and “SLINGER” would not cause confusion); Lever Bros. Co. v. Babson Bros. Co., 197 F.2d 531, 533 (CCPA 1952) (holding that the marks “SURGE” and “SURF” would not cause confusion). Applicant’s mark more dissimilar to H&M’s marks than those approved in the above-cited decisions.

WHEREFORE, the Board should overrule and deny H&M’s Opposition, and should approve Applicant’s mark “UNDIVIDED”.

DATED this 21st day of June, 2010.

PARSONS KINGHORN HARRIS

/Matthew M. Boley/

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CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of June, 2010, I served or caused to be served a true and correct copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** **BY H&M HENNES & MAURITZ AB** upon the following named persons by depositing the same in the United States mail, postage prepaid, addressed as shown below:

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