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

Proceeding	91195328
Party	Plaintiff Hard Candy Cases, LLC
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Attachments	20141215-opposers-request-for-reconsideration-HARDC-41001.pdf(215963 bytes)

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5 UNITED STATES PATENT AND TRADEMARK OFFICE
6 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

7 HardCandy Cases, LLC,)	Opposition No.: 91195327 (Parent)
)	Opposition No.: 91195328
8 Opposer,)	Opposer's Request for Reconsideration
9 v.)	In Re Application Serial Nos.:77700557 &
10 Hard Candy, LLC,)	77700559
)	For the Mark: Hard Candy
11 Applicant.)	Filed: 27 March 2009
)	Published in the Trademark Official Gazette:
)	16 February, 2010

15
16 **OPPOSER'S REQUEST FOR RECONSIDERATION**

17
18 Opposer, HardCandy Cases, LLC ("Opposer"), by and through undersigned counsel,
19 hereby files this request for reconsideration regarding the Board's November 13, 2014 decision.

20
21 **Opposer does not believe the documentary evidence supports a bona fide intent to use**

22 The Board stated, "...we disagree with Opposer's premise that Applicant's documentary
23 evidence is of no probative value merely because leather goods are not mentioned specifically or
24 because most of Applicant's documents postdate the filing of the involved application. With
25 respect to some of the documents not mentioning leather goods specifically, they still make clear
26 that Applicant was considering whether to attempt to, as stated in one document, 'extend Hard
27 Candy into a lifestyle brand.'" Opposer respectfully disagrees with this opinion of the Board.
28 The logic of this analysis does not necessarily logically flow. The documents do not list specific

1 goods and are therefore not supportive. To make a blanket statement stating that Hard Candy
2 would be extended into a lifestyle brand does not support the bona fide intent to use the mark
3 with leather goods. In theory, applying that logic, the argument could be made that Hard Candy
4 could expand into any type of goods and/or services. This type of behavior would theoretically
5 allow anyone who wants to expand their business to file applications in multiple classes without
6 having definite plans for how they would like to expand their brand. Opposer strongly believes
7 Applicant simply tried to monopolize the use of the Hard Candy name without specific plans to
8 expand their brand in any specific direction.

9
10 Moreover, due to the inadequacy of Applicant's produced documents, Applicant has no
11 corroborative evidence to support its claim of bona fide intent to use the mark on leather goods.
12 Mere statements and assertions of intent without corroborative evidence are insufficient to
13 support a claim of bona fide intent to use. *Lane Ltd. v. Jackson International Trading Co.*, 33
14 *USPQ2d 1351 (TTAB 1994)* and *L.C. Licensing Inc. v. Berman*, 86 *USPQ2d 1883 (TTAB 2008)*.

15
16 Applicant has failed to produce required documentary evidence to support its claim of
17 bona fide intent to use its mark in connection with leather goods or provide any explanation for
18 the absence of this documentation. (App. Exhs. 1-13.) Absence of documentary evidence
19 regarding bona fide intent "constitutes objective proof sufficient to prove that the applicant lacks
20 a bona fide intention to use its mark in commerce." *Boston Red Sox Baseball Club LP v.*
21 *Sherman*, 88 *USPQ2d 1581 (TTAB2008)*.

22
23 **Applicant's filing of numerous applications without actual use demonstrates abuse on**
24 **behalf of Applicant**

25
26 As Opposer has pointed out multiple times, Applicant has a pattern and practice of filing
27 trademark applications that Applicant would often allow to abandon after the 3 years of
28 extensions of time to file statements of use would run out. This type of behavior blocks

1 legitimate users of a mark from using the mark and proves a lack of bona fide intent to use the
2 mark. The vast number of abandoned applications factually memorializes Applicant's regular
3 practice of egregiously seeking to extend the reach of its mark into areas well beyond the scope
4 of its immediate business interests.

5
6 In *Salacuse v. Ginger Spirits*, the Board addressed whether an Applicant's trademark
7 filing history is relevant to proving a lack of bona fide intent in a particular case. *Salacuse v.*
8 *Ginger Spirits*, 44 U.S.P.Q.2d 1415 (TTAB 1997). While considering petitioner's motion for
9 summary judgment in *Salacuse v. Ginger Spirits*, the Board found that the evidence of the
10 volume of intent-to-use applications filed for the mark for "a wide variety of goods ranging from
11 food and beverages to luggage to furniture to motor vehicles" presented a genuine issue of
12 material fact relating to petitioner's bona fide intent. (*Id.*)

13
14 Applicant has demonstrated a long-standing pattern and practice of filing trademark
15 applications lacking the requisite bona fide intent to use the mark in commerce, and has stifled
16 Opposer's ability to operate freely in the marketplace. Here, Applicant's failure to provide any
17 adequate documentation of its bona fide intent at the time of filing the '557 application, and then
18 also failing to explain why it cannot provide this evidence is proof of Applicant's lack of bona
19 fide intent in this case.

20
21 Dated this 15th day of December, 2014,

22
23 /s/ Stuart J. West
24 Stuart J. West SBN 202041
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1 CERTIFICATE OF SERVICE

2 IT IS HEREBY CERTIFIED that a true and correct copy of:

3 OPPOSER'S REQUEST FOR RECONSIDERATION

4 was served on this 15th day of December, 2014, by First Class Mail to:

5 Coffey Burlington
6 c/o Gabriel Groisman
7 2601 South Bayshore Drive
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9 Miami, FL 33133

10 
11 Dawn Callender