ESTTA Tracking number: **ESTTA388828**
Filing date: **01/18/2011**

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

Proceeding	91197790
Party	Defendant Ilitch Enterprises, LLC
Correspondence Address	DAVID J. FORD CLARK HILL PLC 500 WOODWARD AVE STE 3500 DETROIT, MI 48226-3435 dford@clarkhill.com
Submission	Answer
Filer's Name	David J. Ford
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Date	01/18/2011
Attachments	answer and affirmative defenses to notice of opposition - Opposition No 91197790.pdf (7 pages)(153068 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of:	§	
Serial No.: 85/056,431	§	
Filed: June 7, 2010	§	
Mark:	§	Opposition No. 91197790
	§	
	§	
Published: November 2, 2010	§	
Applicant: Ilitch Enterprises, LLC	§	
	§	
ALMOD DIAMONDS LTD.,	§	
	§	
Opposer,	§	

vs.

ILITCH ENTERPRISES, LLC,

Defendant.

/

ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION

Ilitch Enterprises, LLC, ("Defendant") for its Answer and Affirmative Defenses to the Notice of Opposition of Almod Diamonds Ltd. ("Opposer"), states as follows:

1. Defendant admits only, upon information and belief, that Opposer claims to be the owner of the United States trademark registration identified in paragraph 1 of the Notice of Opposition. Defendant denies the remaining allegations contained in paragraph 1 of the Notice of Opposition.

2. Defendant denies the allegations contained in paragraph 2 of the Notice of Opposition.

3. Defendant denies the allegations contained in paragraph 3 of the Notice of Opposition.

4. Defendant admits only, upon information and belief, that Opposer claims to be the owner of the United States trademark registration identified in paragraph 4 of the Notice of Opposition. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 4 of the Notice of Opposition and therefore denies the same.

5. Defendant denies the allegations contained in paragraph 5 of the Notice of Opposition.

6. Defendant denies the allegations contained in paragraph 6 of the Notice of Opposition.

7. Defendant denies the allegations contained in paragraph 7 of the Notice of Opposition.

WHEREFORE, it is respectfully requested that the Notice of Opposition be dismissed with prejudice in its entirety, that judgment be entered in favor of Defendant on the Opposition, that Application Serial No. 85/056,431 proceed to registration, and that Defendant be granted such other relief as the Board deems just and proper.

Respectfully submitted,

CLARK HILL PLC

By: /david j ford/

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Attorneys for Applicant

Date: January 18, 2011

AFFIRMATIVE DEFENSES

In further answer to the Notice of Opposition, Defendant asserts that:

1. The Notice of Opposition fails to state a claim upon which relief can be granted.

2. Defendant's mark is not the same as or confusingly similar to Opposer's mark in terms of sight, sound, meaning and commercial impression. Defendant's mark is a logo that consists of an upper case letter "D" and a mirror image upper case letter "D" with a lower case letter "i" positioned horizontally and extending partially across each upper case letter "D." In contrast, Opposer's mark consists of the words "DI DIAMONDS INTERNATIONAL" and includes a picture of what appears to be a diamond above the letter "I" in "DI." The additional words in Opposer's mark distinguishes it from Defendant's mark in length, number of characters, and number of words. As such, the appearances of Defendant's and Opposer's marks are clearly and significantly different.

It is possible, if one were to take each individual character of Defendant's logo and reposition the characters, that one aural interpretation of Defendant's mark could be that of the word "did." The additional words in Opposer's mark, however, create an immediately memorable aural distinguishing point from Defendant's mark. Opposer's mark has a sound and cadence distinctly different from Defendant's mark.

Defendant's mark and Opposer's mark also have markedly different meanings and convey different commercial impressions. Defendant's mark represents and is understood by the purchasing public to refer to "Denise Ilitch Designs." Opposer's mark, "DI DIAMONDS INTERNATIONAL," does not convey the same meaning to consumers and consumers will readily understand the different meanings resulting from the two marks. Defendant points to its

pending "DENISE ILITCH DESIGNS" application (Serial No. 85/054,166) which was published for opposition on November 2, 2010.

The sophistication of purchasers of Defendant's and Opposer's goods and/or services and their care in purchasing has substantial relevance. The nature of the goods and/or services offered in connection with Defendant's mark and Opposer's mark creates a purchasing environment more appropriate to calculated purchasing than impulse buying. The goods and services of Defendant's mark are "bracelets; brooches; earrings; necklaces" and "vending in the field of jewelry, candles, decorative serving utensils, and decorative envelope openers." Defendant's goods and services are typically expensive and are purchased only after careful consideration. In other words, these are simply not the types of goods and services consumers purchase on impulse.

Similarly, the services associated with Opposer's mark are "retail jewelry stores and retail stores featuring diamonds, watches, and jewelry, namely, loose diamonds, necklaces, rings, bracelets, earrings, pins, cuff links and pendants in precious and semi-precious gemstones and metals, crystal products, namely, figurines, balls, vases, writing instruments, namely, pens and pencils, leather goods, namely, wallets, belts, business card holders, appointment books, attachés and briefcases, key chains." Opposer's services also relate to the sale of expensive items that are purchased only after careful consideration. Clearly, consumers making a purchase of an expensive item from Opposer would not be confused into believing that Defendant's mark is in any way connected to Opposer's mark.

Trademark Attorney Inga Marie Ervin of the United States Patent and Trademark Office did not find Defendant's mark confusingly similar with Opposer's mark and did not cite Opposer's mark against Defendant's trademark application. The distinctiveness of Defendant's

mark is confirmed by the fact that Trademark Attorney Ervin did not cite *any* marks against Defendant's application.

3. Defendant's goods and services will not mistakenly be thought by the public to derive from the same source as Opposer's services, nor will Defendant's use of its mark be thought by the public to be a use by Opposer or with Opposer's authorization or approval.

4. Defendant's mark in its entirety is sufficiently distinctively different from Opposer's mark to avoid confusion, deception, or mistake as to the source or sponsorship or association of Defendant's goods and services.

5. Defendant's mark, when used in connection with Defendant's goods and services, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendant with Opposer, or as to the origin, sponsorship, or approval of Defendant's goods and services by Opposer.

WHEREFORE, it is respectfully requested that the Notice of Opposition be dismissed with prejudice in its entirety, that judgment be entered in favor of Defendant on the Opposition, that Application Serial No. 85/056,431 proceed to registration, and that Defendant be granted such other relief as the Board deems just and proper.

Respectfully submitted,

CLARK HILL PLC

By: /david j ford/

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(248) 642-9692
Attorneys for Applicant

Date: January 18, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer and Affirmative Defenses has been served on Elchonon Shagalov by mailing said copy on January 18, 2011, via First Class Mail, postage prepaid to:

Almod Diamonds Ltd.
Office for Legal Affairs
Attn: Elchonon Shagalov
592 Fifth Ave, 2nd Floor
New York, New York 10036
USA

David J. Ford