ESTTA Tracking number: **ESTTA549030**
Filing date: **07/17/2013**

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

Proceeding	91197824
Party	Plaintiff Perfect Pearl Co., Inc. d/b/a Majestic Pearl Co.
Correspondence Address	HOLLY PEKOWSKY AMSTER ROTHSTEIN & EBENSTEIN LLP 90 PARK AVENUE NEW YORK, NY 10016 UNITED STATES ptodocket@arelaw.com
Submission	Other Motions/Papers
Filer's Name	Holly Pekowsky
Filer's e-mail	ptodocket@arelaw.com
Signature	/Holly Pekowsky/
Date	07/17/2013
Attachments	Declaration of Holly Pekowsky in Response to Board Order re Status - 824 Opposition.pdf(378091 bytes)

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

PERFECT PEARL CO., INC. d/b/a/ MAJESTIC PEARL CO., Opposer, v. MAJESTIC PEARL & STONE INC., Applicant.	Opposition No. 91197824

DECLARATION OF HOLLY PEKOWSKY
IN RESPONSE TO BOARD ORDER REGARDING STATUS

HOLLY PEKOWSKY declares:

1. I am a senior counsel at the law firm of Amster, Rothstein & Ebenstein, LLP, attorneys for Opposer Perfect Pearl Co., Inc. d/b/a/ Majestic Pearl Co. ("Opposer") in the above-referenced matter.

2. I submit this Declaration in response to the Board's Order of June 18, 2013 requiring the parties to inform the Board of the status of the civil action which occasioned the suspension of this proceeding, *i.e.*, Civil Action No. 10 Civ. 3998 (PAE) (the "Action").

3. On November 30, 2012, the Court issued an Order in the Action (the "Order"). A true and correct copy of the Order is attached as Exhibit A.

4. Pursuant to the Order, Applicant Majestic Pearl & Stone Inc. ("Applicant") is permanently enjoined from, among other things:

> Using the trademarks MAJESTIC and MAJESTIC PEARL, or any other trademark likely to cause confusion with those marks, on or in connection with the offer for sale or sale of pearl jewelry (*see* Par. 1A of Exh. A).

5. The Order states, however, that this does not "prevent [Applicant] from using MAJESTIC and MAJESTIC PEARL in connection with the sale of items other than pearl jewelry, *e.g.,* loose pearls and beads" (*see* Par. 1A of Exh. A).

6. The Order also requires Applicant to consent to Opposer's registration ". . . of the trademark MAJESTIC and/or MAJESTIC PEARL for jewelry" and to "promptly execute any document reasonably required by [Opposer] to evidence such consent." (*see* Par. 2 of Exh. A).

7. On or about December 31, 2012, Applicant filed an Appeal with the Second Circuit, appealing portions of the Order (the "Appeal"). A true and correct copy of the Notice of Appeal is attached as Exhibit B.

8. Although Applicant's Appeal Brief was due on June 28, 2013, Applicant failed to file the Appeal Brief by June 28, 2013.

9. On July 11, 2013, the Second Circuit issued an Order giving Applicant until July 25, 2013 to submit its Brief on Appeal and indicating that the Appeal will be dismissed if the Brief is not filed by then. A true and correct copy of this Order is attached as Exhibit C.

10. I declare, under penalty of perjury, that all of the foregoing is true and correct.

Holly Pekowsky

Dated: New York, New York
July 17, 2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is one of the attorneys for Opposer, ISI Brands Inc., in the above-captioned Opposition proceeding and that on the date which appears below, caused copy of the foregoing DECLARATION OF HOLLY PEKOWSKY IN RESPONSE TO BOARD ORDER REGARDING STATUS to be served by Federal Express:

(1) to the address of record for Applicant, as follows:

Jason R. Lee, Esq.
Lee Lee and Associates PC
2531 Jackson Road, Suite 234
Ann Arbor, MI 48103
United States
jason@llapc.com

(2) to the attorney representing Applicant in the Action and the Appeal, as follows:

P. Betty Tufariello, Esq.
Intellectulaw™
The Law Offices of P.B. Tufariello, P.C.
25 Little Harbor Road
Mount Sinai, NY 11766

Holly Pekowsky

Dated: New York, New York
July 17, 2013

EXHIBIT A

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/30/12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PERFECT PEARL CO., INC.,

Plaintiff,

-v-

MAJESTIC PEARL & STONE, INC.,

Defendant.

10 Civ. 3998 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

On November 15, 2012, the Court received a motion from the defendant Majestic Pearl & Stone, Inc., asking the Court to amend or alter the judgment and permanent injunction issued on October 18, 2012. On November 16, 2012, the Court issued an order directing defendant to submit a proposed revised judgment and permanent injunction, and directing plaintiff Perfect Pearl Co., Inc. to respond to that submission.

The Court has reviewed the papers submitted by the parties. In the interest of clarity, the Court has modified the wording of its judgment and permanent injunction.

The judgment and permanent injunction now is as follows:

1. Defendant and Defendant's officers, agents, servants, employees, and attorneys and those persons in active concert or participation with them are hereby permanently enjoined from:

    A. Using the trademarks MAJESTIC and MAJESTIC PEARL, or any other trademark likely to cause confusion with those marks, on or in connection with the offer for sale or sale of pearl jewelry; however, this does not prevent defendant from using those trademarks in connection with the sale of items other than pearl jewelry, *e.g.*, loose pearls and beads;

    B. Using any trademark which may be calculated to falsely represent or which has the effect of falsely representing that the products or services of Defendant or third parties are sponsored by, authorized by, or in any way associated with Plaintiff;

    C. Otherwise infringing Plaintiff's MAJESTIC or MAJESTIC PEARL trademarks, including, without limitation, using those marks, or any corporate or trade name containing the word "MAJESTIC" or any derivative of that

word, in connection with the offer for sale or sale of pearl jewelry; however, this does not prohibit Defendant from continuing to use its corporate or trade name for purposes other than in connection with the offer for sale or sale of pearl jewelry;

D. Falsely representing themselves as being connected with Plaintiff, or sponsored by or approved by or associated with Plaintiff or engaging in any act which is likely to falsely cause the trade, retailers, and/or members of the purchasing public to believe that Defendant is, in any way, associated with Plaintiff, and;

E. Misusing the statutory registration symbol, ®, in connection with the sale of any product, or otherwise indicating that Defendant owns a Registration for MAJESTIC or MAJESTIC PEARL that it does not own.

2. Defendant shall consent to the registration by Plaintiff of the trademark MAJESTIC and/or MAJESTIC PEARL for jewelry and shall promptly execute any document reasonably required by Plaintiff to evidence such consent.

3. This judgment shall be entered without the award of damages to either party. Each party shall bear its own costs and attorney's fees.

The Clerk of Court is directed to terminate the motion at docket number 105, and to close this case.

SO ORDERED.

Paul A. Engelmayer

Paul A. Engelmayer
United States District Judge

Dated: November 30, 2012
New York, New York

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

PERFECT PEARL CO., INC. d/b/a MAJESTIC PEARL CO.

Plaintiff,

v.

MAJESTIC PEARL & STONE, INC.

Defendant.

----------X

Case No.:10-cv-3998 (PAE)

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendant Majestic Pearl & Stone, Inc. hereby appeals to the United States Court of Appeals for the Second Circuit from an Order entered in this action on the 30th day of November, 2012.

Dated: December 31, 2012
Mount Sinai, New York

Respectfully submitted,

INTELLECTULAW
THE LAW OFFICES OF P.B. TUFARIELLO, P.C.

By: Panagiota Betty Tufariello

Panagiota Betty Tufariello (PBT 3429)
25 Little Harbor Road
Mount Sinai, NY 11766
631-476-8734
631-476-8737(FAX)
betty@intellectulaw.com

Attorneys for Defendant
MAJESTIC PEARL & STONE, INC.

CERTIFICATE OF SERVICE

I hereby certify that on Monday, December 31, 2012, a true and correct copy of the foregoing **NOTICE OF APPEAL** has been filed via ECF, a notice of which will be sent by operation of the Court's electronic filing system to all parties, including the following attorneys for Plaintiff Perfect Pearl Co., Inc.:

Anthony Lo Cicero, Esq.
Holly Pekowsky, Esq.
AMSTER, ROTHSTEIN & EBENSTEIN, LLP
90 Park Avenue
New York, NY 10016

Date: December 31, 2012

Panagiota Betty Tufariello

Panagiota Betty Tufariello, Esq.

EXHIBIT C

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 500 Pearl Street, in the City of New York, on the 11th day of July, two thousand and thirteen,

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Perfect Pearl Company, Inc., DBA Majestic Pearl Company,

Plaintiff-Counter-Defendant - Appellee,

v.

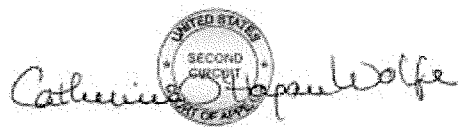
Majestic Pearl & Stone, Inc.,

Defendant-Counter-Claimant - Appellant.

ORDER
Docket Number: 13-99

A notice of appeal was filed on January 3, 2013. Appellant's brief and appendix, due June 28, 2013, has not been filed. The case is deemed in default.

IT IS HEREBY ORDERED that the appeal will be dismissed effective July 25, 2013 if the brief and appendix are not filed by that date. No extension of time to file will be granted.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court