

ESTTA Tracking number: **ESTTA572704**

Filing date: **11/23/2013**

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

Proceeding	91198063
Party	Defendant Evertec Information Technology Co., Ltd.
Correspondence Address	YOU YI LIN EVERTEC INFORMATION TECHNOLOGY CO LTD 3F NO. 77 SHENGL 3RD STREET ZHUBEI CITY HSINCHU COUNTY, 30264 TAIWAN frans_lin@evertec.asia, linyouyi@hotmail.com
Submission	Brief on Merits for Defendant
Filer's Name	YOU YI LIN
Filer's e-mail	frans_lin@evertec.asia, linyouyi@hotmail.com
Signature	/YOU YI LIN/
Date	11/23/2013
Attachments	Trial Brief of Applicant.pdf(173202 bytes )

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

.....  
AlpinBreeze, LLC.

Opposer,

vs.

Evertec Information Technology Co., LTD.

Applicant,  
.....

Opposition No. 91198063

**TRIAL BRIEF OF APPLICANT,  
EVERTEC INFORMATION TECHNOLOGY CO., LTD**

You-Yi Lin

Evertec Information Technology Co., LTD.

3F, No.77, Shengli 3rd St., Zhubei City,

Hsinchu County 302, Taiwan

Tel: 886-2-8286-2866 Fax: 886-2-2848-3458

Email: [frans\\_lin@evertec.asia](mailto:frans_lin@evertec.asia)

## TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES.....	3
STATEMENT OF THE ISSUES.....	4
DESCRIPTION OF THE RECORD.....	5
OBJECTION AND MOTION TO STRIKE.....	6
RECITATION OF THE FACTS.....	7
A. Initial Contact between Ms. Samanta Ng and You-Yi Lin.....	7
B. The Contact between the Manufacturer of DAY & DAY TRADING CORP and You-Yi Lin.....	8
C. Mr. You-Yi Lin’s Development of the ALPINBREEZE Logo.....	8
D. Other Proceedings for the ALPINBREEZE Logo.....	9
E. Applicant’s Aroma Diffuser Business.....	10
ARGUMENT.....	11
A. Relationship.....	11
B. Ownership.....	12
C. US Limited Liability Company.....	12
SUMMARY.....	13

## TABLE OF AUTHORITIES

PAGE

### **Statutes and Rules**

Fed. R. Civ. P. 28(b).....5

TBMP § 404.03(c).....5

TBMP § 703.01(f)(3).....5

TBMP Section 703.01(g).....5

## STATEMENT OF THE ISSUES

Applicant, Evertec Information Technology Co., LTD.(hereafter “Applicant”), is a Taiwanese company and operated by Mr. You Yi Lin (hereafter “Mr. Lin”), aka Mr. Frans Lin. Applicant had a plan and started to develop its aroma diffuser business globally in late year 2008.

On December 1, 2008, Mr. Lin signed a logo agreement to design alpinbreeze logo, and then showed the aroma diffuser with alpinbreeze logo on the website of [www.evertec.asia](http://www.evertec.asia) after end of December to benefit Applicant’s diffuser business. Applicant started to apply the trademark of alpinbreeze in some countries in May, 2009 but to proceed lately its US filing on January 28, 2010, Application Ser. No. 77922346(hereafter Applicant’s Trademark) due to financial factor.

Nevertheless, Mr. Lin’s formerly foreign business partner, Ms Samata Ng (hereinafter “Ms. Ng”) opposed Applicant’s Trademark, Opposition No. 91198063, with AlpinBreeze, LLC.(hereafter “Opposer”), an US offshore company and established by using Mr. Lin’s logo name, by Application Ser. No. 85140585(hereafter Opposer’s Trademark), modified by Applicant’s Trademark, and some false and baseless grounds on January 5, 2011.

Applicant wishes Ms. Ng of Opposer could stop continuing to take advantages from Mr. Lin by using Mr. Lin’s logo and resources and stop damaging and destroying malignantly Mr. Lin’s aroma diffuser business by improper means.

## **DESCRIPTION OF THE RECORD**

1. Deposition upon Written Questions of Samanta Ng with Exhibits, April 17, 2013
2. Deposition upon Written Questions of You-Yi Lin with Exhibits, June 25, 2013
3. Application Ser. No. 77922346(hereafter Applicant's Trademark)
4. Application Ser. No. 85140585(hereafter Opposer's Trademark)
5. Opposition No. 91198063

## **OBJECTION AND MOTION TO STRIKE**

The Applicant objects and strikes the testimony of Ms. Ng and exhibits as not the facts particularly relating to grounds of Opposer's Notice of Opposition. Hence, the Applicant provides following Recitation of the Facts.

Regarding the proposal raised by Opposer prior to the testimony periods, Applicant doesn't accept the affidavit, without involving of impartial third party as what Mr. Sean Lin of DAY & DAY TRADING CORP. did.

On the other hand, TBMP Section 703.01(g) explains that in a foreign country, a Board proceeding testimony deposition may be taken pursuant to Fed. R. Civ. P. 28(b). that a Board proceeding testimony deposition taken of a willing witness in a foreign country usually may be taken on notice before a U.S. consular official, or before anyone authorized by the law of the foreign country to administer oaths therein. The taking of Applicant's deposition upon written questions is permitted by Taiwan R.O.C. based on related law.

Moreover, according to Cf. TBMP § 404.03(c) (concerning discovery deposition of nonparty residing in foreign country) and TBMP § 703.01(f)(3) (securing attendance of unwilling witness residing in foreign country), if the parties so stipulate in writing (and if permitted by the laws of the foreign country, in the case of a deposition to be taken in a foreign country), a deposition may be taken before any person authorized to administer oaths, at any place, on any notice, and in any manner, and when so taken may be used like any other deposition. Again, the taking of Applicant's deposition upon written questions is permitted by Taiwan R.O.C. based on its law.

## RECITATION OF THE FACTS

### A. Initial Contact between Ms. Samanta Ng and You-Yi Lin

1. Mr. Lin knew Ms. Ng via a friend, Mike Chen, to get the help to sell PC peripheral products in Switzerland around September of 2008. *See Direct Examination Questions for the Deposition upon Written Questions of You-Yi Lin with Exhibits, June 25, 2013 (hereinafter "Lin Deposition") at p.2.*
2. Mr. Lin had tried to cooperate with Ms. Ng, an ambitious person, pushy and sometimes punctilious, and self-confident, for some business projects. *Lin Deposition at p. 2; also see Cross Examination Questions for the deposition upon Written Questions of Frans Lin, June 25, 2013 (hereinafter "Cross Lin Deposition") at p. 2-3.*
3. Mr. Lin had taught Ms. Ng, not used to deal with international business matters, lots of knowledge related to international trade business and so forth that Ms. Ng could not set up any business without taking advantages of courtesy and knowledge of Mr. Lin. *Lin Deposition at p. 4-5; also see "Cross Lin Deposition" at p. 2-3.*
4. The business model between Ms. Ng and Mr. Lin was that Mr. Lin sourced products vendors in Taiwan or Asian countries and Ms. Ng sold those in Switzerland or Europe in terms of playing roles of black and white faces to others. *Lin Deposition at p. 2.*
5. The last business project between Ms. Ng and Mr. Lin was aroma diffuser business, starting in 2008. *Lin Deposition at p.3; also see Cross Lin Deposition at p. 3.*
6. Ms. Ng raised a budget plan for the last project, aroma diffuser business, to Mr. Lin to cooperate based on 50%/50% shares each to run a company. *Lin Deposition at p.4, see also Exhibition 1 to Lin Deposition.*
7. Ms. Ng and Mr. Lin planned to set up an offshore company in Delaware of US that foreign members are not liable to tax and don't have to file tax forms if the income derived is not from the United States. *Lin Deposition*

*atp.3-4, 8. See also Exhibition 2 and 9 to Lin Deposition.*

8. Ms. Ng malignantly registered an US offshore company by using Mr. Lin's logo name, alpinbreeze, on the purpose of preemptive plan during the last cooperated project. *Lin Deposition at p.4; also see Cross Lin Deposition at p. 4.*
9. Ms. Ng continued to take advantages from Mr. Lin and tried to destroy Mr. Lin's aroma diffuser business after the registration of offshore company on the purpose of preemptive plan. *Lin Deposition at p.4-5; also see Cross Lin Deposition at p. 10.*

#### **B. The Contact between the Manufacturer of DAY & DAY TRADING CORP and You-Yi Lin**

10. On March 13, 2009, Mr. Lin on behalf of Applicant informed Mr. Sean Lin of DAY & DAY TRADING CORP the company name and tax number of Applicant to be used on the invoice for the product of aroma diffuser. *Lin Deposition at p.5 and Exhibition 3 to Lin Deposition; also see Cross Lin Deposition at p. 10.*
11. Mr. Lin never got any free diffusers from Ms. Ng nor DAY & DAY TRADING CORP. On March 16, 2009, Mr. Sean Lin quoted Applicant for 24 pcs of aroma diffusers and Applicant transferred the payment on the same day as well as getting related voucher dated on March 25, 2009. *See Lin Deposition at p.5 and Exhibition 3 to Lin Deposition; also see Cross Lin Deposition at p. 10.*
12. Mr. Sean Lin of DAY & DAY TRADING CORP. was forced by Ms. Ng to stop selling diffusers to Mr. Lin. *See Lin Deposition at p.5 and Cross Lin Deposition at p. 10.*

#### **C. Mr. You-Yi Lin's Development of the ALPINBREEZE Logo**

13. Mr. Lin had a plan to create a special logo before the last project to cooperate with Ms. Ng and had transferred the commission of NT\$2,000,

around US\$67, to a logo designer, Karen Lin, on August 7, 2008. See *Lin Deposition at p.5-6 and Exhibition 4 to Lin Deposition*. Also see *Cross Lin Deposition at p. 4*.

14. The first logo name, swissbreeze, didn't meet purpose of the last cooperated project. Hence, Mr. Lin generated some logo names and decided to choose logo name of alpinbreeze as "Alpine" has a very good imagination in Taiwan. See *Lin Deposition at p.6 and Exhibition 4-5 to Lin Deposition*. Also see *Cross Lin Deposition at p. 4*.
15. Mr. Lin signed an agreement with the logo designer, Karen Lin for the logo design of alpinbreeze on December 1, 2008, and then transferred NT\$3,000, about US\$100 commission to her on January 5, 2009 after her finish end of December. See *Lin Deposition at p.6 and Exhibition 6 to Lin Deposition*. Also see *Cross Lin Deposition at p. 4*.
16. The aroma diffuser with alpinbreeze logo was showed on the website of [www.evertec.asia](http://www.evertec.asia), created by Mr. Lin on October 13, 2008 right after the logo designer finished the design end of December, 2008. See *Cross Lin Deposition at p. 7-8*.
17. Mr. Lin signed an appointed contract with a law firm on January 19, 2010 for US filing of alpinbreeze logo, around January 28, 2010. See *Cross Lin Deposition at p. 2*.

#### **D. Other Proceedings for the ALPINBREEZE Logo**

18. Applicant and/or Mr. Lin had raised opposition for the registration of Opposer and/or Ms. Ng in Europe by Applicant's French trademark of alpinbreeze, and Ms. Ng raised a trademark lawsuit in France accordingly in 2011. See *Lin Deposition at p. 7*.
19. Applicant had a big chance to win the French trademark lawsuit, but Mr. Lin accepted a suggested way to withdraw Applicant's French trademark to close the opposition to OHIM as well as French lawsuit due to financial factors. See *Lin Deposition at p. 7-8*.

20. Ms. Ng raised another trademark opposition of alpinbreeze with Mr. Lin in Mainland China, however, the verdict of China Trademark Office indicates related grounds for opposition were not accepted by the Office and it adjudicated approval of the registration of alpinbreeze trademark by Mr. Lin on September 30, 2012. *See Lin Deposition at p.8 and Exhibition 8 to Lin Deposition.*

#### **E. Applicant's Aroma Diffuser Business**

21. Mr. Lin signed a logo agreement to design alpinbreeze logo on December 1, 2008, and then showed the aroma diffuser with alpinbreeze logo on the website of [www.evertec.asia](http://www.evertec.asia) to develop diffuser business right after end of December, 2008. *Id.*

22. Applicant got the first diffuser order around April 2009 in Taiwan and applied for US filing of alpinbreeze logo around January 28, 2010. *See Cross Lin Deposition at p. 2.*

23. Except for the last cooperated project, Applicant got the first diffuser order from US customer and delivered it on December 7, 2010. *See Lin Deposition at p.9 and Exhibition 11 to Lin Deposition. Also see Cross Lin Deposition at p. 6.*

24. Applicant did lots of R&D jobs and got two patents from Taiwan government on January 21, 2011 and August 11, 2011 as well as developing the own diffuser with alpinbreeze logo. *See Lin Deposition at p.8 and Exhibition 10 to Lin Deposition.*

25. Applicant made some alpinbreeze advertisements from December 5, 2010 to February 28, 2011 via facebook ([www.facebook.com](http://www.facebook.com)) and so on in US. *See Lin Deposition at p.9 and Exhibition 12 to Lin Deposition. Also see Cross Lin Deposition at p. 8.*

## ARGUMENT

### A. Relationship

With respect to the ground Opposer raised for this opposition by alleging subordinate relationship between Ms. Ng and Mr. Lin is a false and baseless representation. Mr. Lin has never been employed by Ms. Ng and there is no any employment agreement between both. *Lin Deposition at p. 4-5*

Moreover, the salary range for a manager position is about US\$2,000 to US\$3,000 monthly in Taiwan. The relationship of the period of time between September 2,008 and January, 2010 is around 16 months and the total salary could be ranging US\$32,000 and US\$48,000 or above. Mr. Lin never got any salary in terms of money or goods from Opposer.

Incredibly, Opposer provided an unfaithful affidavit from Mr. Sean Lin (Yungshiun Lin), director of DAY & DAY TRADING CORP. by alleging giving Mr. Lin 24 of the Opposer's diffusers, around USD 960, and so forth, a falsification. See *Lin Deposition at p.5 and Exhibition 3 to Lin Deposition; also see Cross Lin Deposition at p. 10.*

Instead, Ms. Ng knows the importance of trademark to business very well. She knew to register the trademark of Puzhen in Switzerland on the purpose of preemptive plan. Why did Ms. Ng not apply for the trademark of alpinbreeze for US market between March 10, 2009 or earlier date and January 8, 2010, the date Applicant applied? *Lin Deposition at p.7, see also Exhibition 7 to Lin Deposition.*

On the whole, Ms. Ng, treated as a foreign business partner by Mr. Lin, could not set up any business without taking advantages of courtesy and knowledge of Mr. Lin. *Lin Deposition at p. 4-5; also see "Cross Lin Deposition" at p. 2-3.*

In spite of that, Ms. Ng started to destroy Mr. Lin's aroma diffuser business as well as business relationship after her registration of offshore company by using Mr. Lin's logo name on the purpose of preemptive plan during the last cooperated project finally. *Lin Deposition at p.4-5; also see Cross Lin Deposition at p. 4 and 10.*

## **B. Ownership**

Mr. Lin suggested the logo name of alpinbreeze to Ms. Ng, treated as a foreign business partner for the last cooperated project, and paid the individual designer for the design works. Applicant is the rightful owner of alpinbreeze trademark. See *Lin Deposition at p.5-6 and Exhibition 4-6 to Lin Deposition*. Also see *Cross Lin Deposition at p. 4*.

On the basis of the purpose of preemptive plan, Ms. Ng used Mr. Lin's logo name to set up an US offshore company during the last cooperated project. Then, Opposer filed an US trademark application on September 29, 2010 and filed related Opposition on January 5, 2011. In that application, Opposer falsely represented, inter alia that it owned the alpinbreeze mark, when in fact the mark was owned by Opposer not Applicant. In fact, the alpinbreeze mark, Opposer filed is modified by Applicant's Trademark.

Furthermore, Opposer also falsely represented that no entity other than Opposer had the right to use the alpinbreeze mark even though Opposer knew that the alpinbreeze mark was at the time of the application owned by Applicant, not Opposer. Following Opposer's statement of facts of trial brief are not the facts, especially the part related to affidavit from Mr. Sean Lin (Yungshiu Lin), director of DAY & DAY TRADING CORP.

## **C. US Limited Liability Company**

The type company of Opposer is US Limited Liability Company (hereinafter "US LLC") in Delaware, that non-residents can be a member of an US LLC which has it referred to an Offshore LLC in Delaware. Actually, it is not effectively connected with trade or business within the US nor do they employ US residents or rely on a dedicated place of business within US. An US LLC does not pay tax, so foreign members are not liable to tax and don't have to file tax forms if the income derived not from the United States. As Ms. Ng had never filed any tax returns to US government, there supposes to be a critical point that whether Opposer had trades in US and/or got income derived from US or not. See *Lin Deposition at p.8 and Exhibition 9 to Lin Deposition*; also see *Cross Lin Deposition at p. 8*.

## SUMMARY

After malignantly using Mr. Lin's logo name to establish an US offshore company, Ms. Ng continued to take advantages from Mr. Lin and tried to damage and destroy Mr. Lin's aroma diffuser business.

Mr. Lin of Applicant suggested the logo name of alpinbreeze to Ms. Ng and paid the designer for the design works around end of December, 2008. Applicant is the rightful owner of alpinbreeze trademark. Yet, Opposer filed an US trademark application by using a modified logo of Applicant's Trademark on September 29, 2010. Again, the grounds Opposer raised to oppose Applicant's registration on January 5, 2011 are false and baseless. To justify the false grounds, Opposer even furnished unfaithful affidavit from Mr. Sean Lin of DAY & DAY TRADING CORP. and some other unfaithful statements for its deposition afterwards.

Applicant had been spending lots of efforts for its aroma diffuser business, and wish Ms. Ng of Opposer could stop taking advantages from Mr. Lin in terms of using Mr. Lin's logo as well as stopping damaging Applicant's aroma diffuser business by any of improper means.

Respectfully submitted,

Date: November 23, 2013

/You-Yi Lin/

You-Yi Lin

Evertec Information Technology Co., LTD.

3F, No.77, Shengli 3rd St., Zhubei City,

Hsinchu County 302, Taiwan

Tel: 886-2-8286-2866 Fax: 886-2-2848-3458

Email: [frans\\_lin@evertec.asia](mailto:frans_lin@evertec.asia)

.....

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing to be served via email below on November 23, 2013.

Matthew H. Swyers  
The Trademark Co.  
344 Maple Ave W Ste 151  
Vienna Va 22180, US  
Tel: (800) 906-8626  
mswyers@thetrademarkcompany.com

/You-Yi Lin/  
You-Yi Lin