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

Proceeding	91198210
Party	Defendant MAJESTIC PEARL & STONE INC.
Correspondence Address	Jason R Lee Lee, Lee & Associates, P.C. Suite 234 2531 Jackson Road Ann Arbor, MI 48103 UNITED STATES jason@llapc.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Jason R. Lee
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Signature	/Jason R. Lee/
Date	03/24/2011
Attachments	Motion to Suspend for Civil Action77779710.pdf (2 pages)(267282 bytes) Complaint.pdf (8 pages)(262555 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,	)	Opposition No. 91198210
	)	In the Matter of
v.	)	Serial No. 77779710
	)	Filed: July 13, 2009
Majestic Pearl & Stone Inc.,	)	Mark: Majestic Pearl
Applicant.	)	Published: September 21, 2010

MOTION TO SUSPEND FOR CIVIL ACTION

Applicant, Majestic Pearl & Stone Inc., (Majestic), requests a suspension of these proceedings pending the outcome of a civil action that has begun between the two parties, Applicant as Defendant and Opposer as Plaintiff, in the United States District Court in the Southern District Of New York, Case No. 10-CV-3998(RWS).

Dates this 10th day of February, 2011.

Respectfully Submitted,

By: /Jason R. Lee/_____
Jason R. Lee, Esq.
Attorney for Applicant

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CERTIFICATE OF SERVICE

I hereby certify that on February 10th, 2011, a true and correct copy of the foregoing Motion To Suspend For Civil Action was served upon Opposer and its attorneys of record:

Opposer

Perfect Pearl Co., Inc. d/b/a Majestic Pearl Co.
100 State Street
Moonachie, NJ 07074

Opposer's Attorney of Record

AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 Park Avenue
New York, New York 10016
(212) 336-8000

By First Class Mail addressed to the addresses listed above.

Date: February 10th, 2011

/ Jason R. Lee /
Jason R. Lee

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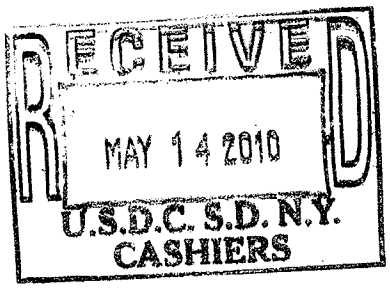
Attorneys for Plaintiff



UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PERFECT PEARL CO., INC. d/b/a/ MAJESTIC PEARL CO.,	
Plaintiff,	Civil Action No. JUDGE SWEET
v.	**JURY TRIAL DEMAND**
MAJESTIC PEARL & STONE INC.,	10 CV 3998
Defendant.	

COMPLAINT

1. Plaintiff Perfect Pearl Co., Inc. d/b/a/ Majestic Pearl Co. ("Plaintiff"), through its attorneys, for its Complaint against Defendant Majestic Pearl & Stone, Inc. ("Defendant"), alleges as follows:

NATURE OF THE ACTION

2. This is an Action arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and state law. Defendant has willfully and unlawfully infringed Plaintiff's trademark rights with the clear and unmistakable intent and effect of causing confusion, mistake and deception among customers and potential customers of jewelry.

3. Plaintiff is a corporation organized and existing under the laws of the State of New York, having offices and places of business at 100 State Street, Moonachie, NJ 07074 and 389 5th Avenue, New York, New York. For forty-five years, Plaintiff had an address at 29th Street in Manhattan.

4. On information and belief, Defendant is a corporation organized and existing under the laws of the State of New York, having an office and place of business at 65 West 36th Street, Floor 2, New York, NY 10018.

5. Defendant is transacting and doing business within this judicial district and has committed the acts complained of herein within this judicial district. Defendant is subject to the jurisdiction of this court pursuant to laws of this State and Rule 4 of the Federal Rules of Civil Procedure.

Plaintiff's Well Known Trademark

6. Plaintiff has adopted, used and continues to use the inherently distinctive trade name, trademark and service marks MAJESTIC and MAJESTIC PEARL since 1986 in connection with the sale of jewelry (collectively, the "MAJESTIC Marks"). Products sold under the MAJESTIC Marks are offered for sale and sold on the well known website, QVC.com, as well as other distribution channels.

7. Products sold under the MAJESTIC Marks have been promoted throughout the United States.

8. The MAJESTIC Marks have come to be known to the purchasing public throughout the United States as representing products of high quality, emanating from a single source. As a result thereof, the MAJESTIC Marks and the goodwill associated therewith have become assets of great value to Plaintiff.

9. By virtue of the renown acquired by the MAJESTIC Marks, the MAJESTIC Marks have developed a secondary meaning and significance in the minds of the purchasing public and products bearing such trademark are identified with a single source.

Defendant's Infringing Activities

10. Long after Plaintiff's adoption and use of the MAJESTIC Marks, Defendant began using the marks MAJESTIC and MAJESTIC PEARL n connection with jewelry, which are confusingly similar to Plaintiff's MAJESTIC Marks (the "Infringing Marks"), including within this judicial district.

11. The advertising and offer for sale by Defendant of jewelry under the Infringing Marks has been in total disregard of Plaintiff's rights and were (i) commenced, and (ii) have continued in spite of Defendant's knowledge that the advertising and offer for sale of such products was and is in direct contravention of Plaintiff's rights.

COUNT I
(VIOLATION OF 15 U.S.C. § 1125(a))

12. This claim arises under the provisions of the Trademark Act of 1946, 15 U.S.C. § 1051, *et seq.*, particularly under 15 U.S.C. § 1125(a) and alleges the use in commerce by Defendant of false designations of origin and false descriptions and representations of fact. This Court has jurisdiction over the subject matter of this claim pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

13. Plaintiff repeats and realleges the allegations contained in the preceding Paragraphs as if fully set forth herein.

14. Defendant has affixed, applied, or used in connection with the offer for sale of its goods, false designations of origin which tend falsely to describe or represent that the goods offered by Defendant are sponsored by, authorized by, or connected with Plaintiff, when they are not.

15. Upon information and belief, Defendant has marketed, distributed and offered for sale goods in connection with colorable imitations and simulations of the MAJESTIC Marks after receiving notice from Plaintiff with the express intent of causing confusion and mistake, of deceiving, and misleading the purchasing public to buy and otherwise trade in its products in the erroneous belief that they were relying upon the reputation of Plaintiff. Defendant's acts therefore constitute use of false designation of origin and false descriptions of fact in violation of 15 U.S.C. § 1125(a).

16. Plaintiff has no adequate remedy at law and is suffering irreparable harm and damage as a result of the acts of Defendant complained of herein in an amount thus far not determined, to be determined at trial.

COUNT II
(UNFAIR COMPETITION UNDER NEW YORK LAW)

17. This claim arises under the common law of the State of New York relating to trademark infringement and unfair competition. This Court has jurisdiction over the subject matter of this claim pursuant to the provisions of 28 U.S.C. § 1338(b), this being a claim of unfair competition joined with a substantial and related claim under the Trademark Laws of the United States, and pursuant to 28 U.S.C. § 1367 under the doctrine of supplemental jurisdiction. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

18. Plaintiff repeats and realleges the allegations contained in the preceding Paragraphs as if fully set forth herein.

19. As more fully set forth above, the MAJESTIC Marks have come to have a secondary meaning indicative of origin, relationship, sponsorship, and/or association with Plaintiff. The purchasing public is likely to attribute to Plaintiff use by Defendant of the Infringing Marks as a source of authorization and/or sponsorship for Defendant's business.

20. On information and belief, Defendant has intentionally appropriated the MAJESTIC Marks with the intent of causing confusion, mistake, and deception as to its relationship with Plaintiff and with the intent to palm itself off as being authorized by, sponsored by, approved, by or licensed by Plaintiff and, as such Defendant has committed trademark infringement and unfair competition under the common law of this State.

21. Plaintiff has no adequate remedy at law and has suffered irreparable harm and damage as a result of Defendant's acts as aforesaid in an amount thus far not determined, to be determined at trial.

WHEREFORE, Plaintiff demands:

I. That an injunction be issued enjoining Defendant and Defendant's officers, agents, servants, employees, and attorneys and those persons in active concert or participation with them:

A. From using the MAJESTIC Marks or any trademark confusingly similar thereto including, without limitation, the Infringing Marks;

B. From 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. From infringing the MAJESTIC Marks;

D. From otherwise unfairly competing with Plaintiff; and

E. From falsely representing itself 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.

II. That Defendant be required to pay to such actual damages as Plaintiff has sustained in consequence of the acts of Defendant complained of herein, and that any such monetary award be enhanced up to three times pursuant to the provisions of 15 U.S.C. § 1117.

III. That Defendant be required to account to Plaintiff for all profits resulting from Defendant's infringing activities and that such award of profits to Plaintiff be increased by the Court as provided for under 15 U.S.C. § 1117.

IV. That Defendant be required to pay to Plaintiff punitive damages in connection with Plaintiff's common law unfair competition claim.

V. That Plaintiff have recovery from Defendant of the costs of this action and Plaintiff's reasonable attorneys fees pursuant to 15 U.S.C. § 1117.

VI. That Plaintiff have all other further relief as the Court may deem just and proper under the circumstances.

Respectfully submitted,

Dated: May 13, 2010
New York, New York

By: _____
Anthony F. Lo Cicero
Holly Pekowsky

AMSTER, ROTHSTEIN & EBENSTEIN LLP
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New York, NY 10016
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JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Perfect Pearl Co., Inc. d/b/a/ Majestic Pearl Co., hereby demands trial by jury on all issues triable by right of jury in this action.