ESTTA Tracking number: **ESTTA424737**
Filing date: **08/11/2011**

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

Proceeding	91199581
Party	Plaintiff Hudson Clothing, LLC
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Submission	Opposition/Response to Motion
Filer's Name	Rita Weeks
Filer's e-mail	rweeks@mwe.com, dciplit@mwe.com
Signature	/s/ Rita Weeks
Date	08/11/2011
Attachments	2011.8.11 - Hudson Clothing opposition.pdf (15 pages)(953167 bytes) 2011.8.11 - Rita Weeks declaration.pdf (5 pages)(186858 bytes) Exhibit A to Weeks decl.pdf (2 pages)(105324 bytes) Exhibit B to Weeks decl.pdf (2 pages)(29290 bytes) Exhibit C to Weeks decl.pdf (2 pages)(21776 bytes) Exhibit D to Weeks decl.pdf (2 pages)(19281 bytes) Exhibit E to Weeks decl.pdf (5 pages)(136270 bytes)

ATTORNEY DOCKET NO: 085831-0102

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

HUDSON CLOTHING, LLC, Opposer, v. CHRISTINA GOERNER, Applicant.	Opposition No. 91,199,581 Application Serial No: 85/119,450 Mark: CATHERINE HUDSON

OPPOSER HUDSON CLOTHING, LLC'S OPPOSITION TO APPLICANT'S MOTION TO DISMISS

Hudson Clothing, LLC ("Opposer") files this Opposition to Applicant Christina Goerner's ("Applicant") Motion to Dismiss.

Applicant's motion may be the most frivolous motion that has been filed in the history of the United States Trademark Trial and Appeal Board. The fact that the motion was drafted by an attorney – not a party acting *pro se* -- makes this motion even more remarkable. It is unfortunate that the Board does not have the power to award monetary sanctions for frivolous filings, because if ever there was a case that cried out for that relief, this would be it.

To briefly summarize, Applicant has filed a motion to dismiss for ineffective service of process, despite the fact that: (1) the evidence is undisputed she was properly served . . . twice; (2) she timely filed a lengthy, detailed Answer to the Notice of Opposition; (3) she has been participating in these proceedings since the beginning; (4) her counsel participated in the required Discovery Conference where he admitted that Applicant had read the Notice of Opposition; and (5) Applicant's motion was filed nearly three weeks late.

But there's more: Applicant's motion also seeks dismissal under Rule 12 of the Federal Rules of Civil Procedure for (a) "failure to conduct *bona fides* settlement negotiations; (b) "the overall weakness of the mark HUDSON standing alone," and (c) "[Opposer's] monopolistic filing of multiple oppositions." Applicant is unable to cite any legal authority to support of these arguments, which is hardly surprising because there is no case in the history of trademark jurisprudence which provides for a Rule 12 dismissal based on the alleged "failure to conduct *bona fides* settlement negotiations" (whatever that means), the alleged "overall weakness" of the mark, or the alleged "monopolistic" filing of multiple oppositions.

Applicant's motion should be denied. The Board should require Applicant to contact the Board to ask permission before it files another motion. That will prevent the further depletion of the resources of the Board and the Opposer from Applicant's filing of motions that have no basis in reality.

I. BACKGROUND

A. The Institution And Service of this Notice of Opposition

Opposer is one of the leading premium jean sellers in the United States and the world. Opposer owns federally registered marks for HUDSON, Reg. Nos. 3273129 and 3385499, for "clothing not made of leather, namely, jeans, pants, shirts, jackets, and skirts" and "women's jeans." On August 31, 2010, Applicant filed an intent-to-use application to register CATHERINE HUDSON for a wide range of clothing. On April 27, 2011, Opposer electronically filed a Notice of Opposition to Applicant's application based upon priority and likelihood of confusion. (*See* Declaration of Rita Weeks ("Weeks Decl."), ¶ 4.) Attached to Opposer's Notice of Opposition was a "Certificate of Service," wherein Opposer certified that a copy of the Notice of Opposition was served upon Applicant by first class mail on April 27, 2011

to Applicant's address listed in the application, i.e. Christina Goerner, Hofadel Building, 196 Acton Road, Annapolis, MD 21403. (Weeks Decl. ¶ 5.) Subsequent to filing the Notice of Opposition, the U.S. Postal Service did not return the service copy of the Notice of Opposition. (Weeks Decl. ¶ 6.)

On April 27, 2011, the Board instituted this Opposition proceeding and notified Applicant of the Opposition via a scheduling order. The Board's April 27, 2011 Scheduling Order informed Applicant that the Opposition was available for review via the Board's online system, with a link to the Notice of Opposition, which included the certificate of service. It is undisputed that Applicant received the Board's April 27, 2011 Scheduling Order, because Applicant expressly acknowledged receiving it, and thus also the Notice of Opposition, in an email to Opposer's counsel dated June 22, 2011. (*See* Exhibit C to Weeks Decl.)

B. Applicant's Answer to the Notice of Opposition

On June 3, 2011, Applicant filed a detailed Answer to the allegations in Opposer's Notice of Opposition and also filed several affirmative defenses, including that Applicant allegedly had not received the Notice of Opposition served upon Applicant. Applicant's Answer was signed by Applicant at the address listed in the application, i.e., Hofadel Building, 196 Acton Road, Annapolis, MD 21403.

C. Opposer's Supplemental, Courtesy Mailing Of The Notice of Opposition to Applicant

On June 16, 2011, after receiving Applicant's Answer and in an abundance of caution, Opposer mailed the Notice of Opposition and the Board's Scheduling Order via Federal Express to Applicant at Applicant's service address of Christina Goerner, Hodafel Building, 196 Acton Road, Annapolis, Maryland 21403. (*See* Weeks Decl.) ¶ 7, Exhibit A to Weeks Decl.) The Notice of Opposition and Scheduling Order was delivered to Applicant at that address via

Federal Express on June 20, 2011. A copy of the proof-of-delivery from Federal Express showing receipt of that mailing is attached hereto as Exhibit B to the Declaration of Rita Weeks.

D. Applicant's Communications with Opposer's Counsel Concerning The Initial Discovery Conference

On June 22, 2011, Applicant emailed Opposer's counsel to propose a date and time to conduct the discovery conference via telephone. (*See* Exhibit C to Weeks Decl.) Applicant again emailed Opposer's counsel on June 23, 2011 to propose a date and time. (Exhibit D to Weeks Decl.) Applicant further engaged in a series of emails with Opposer's counsel between June 24 and July 5, 2011 to confirm the date and time for a telephone call to conduct the discovery conference. (Exhibit E to Weeks Decl.) In those numerous communications, Applicant never stated that she had not received the Notice of Opposition. (*See* Exhibits C-D to Weeks Decl.) In those numerous communications, Applicant never stated that she was considering filing a motion to dismiss for insufficient service. (*Id.*) In those numerous communications, Applicant never stated that an attorney was representing her in this case. (*Id.*)

E. The Telephonic Discovery Conference

Applicant and Opposer's counsel agreed to conduct the discovery conference on July 5, 2011. (*See* Exhibit E to Weeks Decl.) On July 5, 2011, the required discovery conference occurred. Ms. Weeks, counsel of record for Opposer, participated for Opposer. (Weeks Decl. ¶ 12.) To Opposer's counsel's surprise, an individual claiming to be an attorney and to have the name "Robert Eichelburg" participated in the conference on behalf of Applicant. (Weeks Decl. ¶ 13.) Before the telephone conference of that day, Applicant never stated to Opposer that she was being represented by an attorney in this matter or mentioned an individual named Mr. Eichelburg. (Weeks Decl. ¶ 14.) To this day, no attorney has made an appearance for Applicant. (Weeks Decl. ¶ 15.)

Things got more bizarre. Before Mr. Eichelburg would proceed with the conference, he insisted that Ms. Weeks confirm that the telephone call was not being recorded, and that the call was not being conducted via speakerphone. (*Id.* ¶ 16.) Once the conference started, the reasons for Attorney Eichelburg's strange request became clear.

During the July 5 teleconference, attorney Eichelburg was utterly ignorant of Board Procedure and was even unaware (or at least claimed to be unaware) of the topics that were required to be discussed. (Weeks Decl. ¶ 17.) After confirming that no one was listening, Mr. Eichelburg asked Opposer's counsel, "well what do you want to talk about?" (*Id.* ¶ 18.) Opposer's counsel responded that they must discuss the topics required to be discussed by the Board rules, and started with the topic concerning "the nature of and basis for [the parties'] claims and defenses." (*Id.* ¶ 19.) Before Opposer's counsel could utter a sentence explaining the bases for Opposer's claims, Mr. Eichelburg cut off her off, stating "**we have read your Notice of Opposition**" and to move on to the next topic. (*Id.* ¶ 20.)

Opposer's counsel next turned to the discussion of the topic, "the possibility of settling the case or at least narrowing the scope of claims or defenses." (Weeks Decl. ¶ 21.) Opposer's counsel explained that it would be helpful to have certain information concerning Applicant's intended business in order to facilitate possible settlement. (*Id.*) Attorney Eichelburg began to provide certain information, but stopped suddenly and stated that he needed to speak to his client. (*Id.* ¶ 22.)[1] Attorney Eichelburg then ended the discovery conference. (*Id.*)

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[1] Applicant's Motion to Dismiss (at pp. 2, 6-7) advances several knowingly false statements about the nature of the parties' settlement negotiations at the Discovery Conference. Those false statements are immaterial to Applicant's motion and thus, there is no reason to address them. Opposer does note that those false statements shed further light on Mr. Eichelburg's odd insistence at the very beginning of the Discovery Conference for confirmation that no one other than Opposer's counsel was listening.

At no point during the discovery conference did attorney Eichelberg state that Applicant had not been properly served with the Notice of Opposition. (*Id.* ¶ 23.) At no point during the discovery conference did attorney Eichelburg request another copy of the Notice of Opposition. (*Id.* ¶ 24.) In fact, when Opposer's counsel tried to discuss the claims in the Notice of Opposition as required by Board Procedure, attorney Eichelburg immediately cut her off, stating "We have read your Notice of Opposition." (*Id.* ¶ 20.) At no point during the discovery conference, did the individual claiming to be attorney Eichelburg state that he intended to file a motion to dismiss the opposition for lack of proper service. (*Id.* 25.)

F. Applicant's Motion to Dismiss

On July 22, 2011, Applicant filed a Motion to Dismiss, alleging insufficient service of the Notice of Opposition. Applicant also alleged that the Opposition should be dismissed due to: (a) Opposer's alleged "failure to conduct *bona fides* settlement negotiations; (b) "the overall weakness of the mark HUDSON standing alone," and (c) "[Opposer's] monopolistic filing of multiple oppositions." (Motion to Dismiss, p. 7.) Applicant never met and conferred with Opposer before filing her motion to dismiss. (Weeks Decl. ¶ 26.) Before the filing of Applicant's motion, Opposer had no idea that Opposer was considering filing the motion. (Weeks Decl. ¶ 27.)

Unlike Applicant's Answer, Applicant's Motion to Dismiss was signed on Applicant's behalf by attorney Eichelburg. Attorney Eichelburg claims to have the identical address of Applicant, i.e., Hodafel Building 196 Acton Road, Annapolis, MD.

II. LEGAL ARGUMENT

The allegations in Applicant's Motion to Dismiss are both factually inaccurate and not supported by the law.

A. Applicant's Motion Is Untimely

Applicant's Motion to Dismiss should be denied outright based upon the undisputed fact that it is untimely. Federal Rule of Civil Procedure 12(b) governs the procedure by which a party may raise the defense of insufficient service of process in an Opposition proceeding. *See* Trademark Rule 2.116(a). Any motion to dismiss an Opposition based on the affirmative defense of insufficient service must be timely filed to be effective. *See* FRCP 12(b) (a motion to dismiss asserting insufficient service of process "must be made before pleading if a responsive pleading is allowed.") The Board has held that "[t]o be considered timely, a motion to dismiss for insufficient service should be filed prior to, or concurrently with, defendant's answer." *Chocoladefabriken Lindt & Sprungli AG v. Karlo Flores,* Opp. No. 91187963 (T.T.A.B. July 30, 2009.) Applicant filed its Answer to Opposer's Notice of Opposition on June 2, 2011. Applicant filed its Motion to Dismiss for allegedly insufficient service over one month later, on July 22, 2011. Therefore, Applicant's motion to dismiss should be denied outright as untimely. *See Chocoladefabriken Lindt & Sprungli AG v. Karlo Flores,* Opp. No. 91187963 (T.T.A.B. July 30, 2009) ("Applicant's motion to dismiss, filed one month after its answer, is therefore untimely")(finding motion to dismiss for insufficient service to be untimely where motion was filed one month after Answer, but considering merits of motion because Opposer did not challenge timeliness, denying motion to dismiss where opposer served applicant directly instead of applicant's attorney of record where Opposer mailed a copy of the Opposition promptly upon learning of error).

B. Applicant Was Properly Served Under 37 C.F.R. § 2.101(a) and (b)

Applicant's Motion to Dismiss should also be dismissed because Applicant was properly served and Opposer complied with its service obligations. Trademark Rules 2.101(a) and

2.101(b), in relevant part, respectively provide that the notice of opposition "must include proof of service on the applicant, or its attorney or domestic representative of record, at the correspondence address of record in the Office. . ." and that the filing party must serve a copy of the notice of opposition "on the attorney of record for the applicant or, if there is no attorney, on the applicant." Here, Opposer complied with the technical requirements for filing an opposition with the Board under Trademark Rule 2.101(a), namely, timely filing its Notice of Opposition, payment of the fee and providing proof of service. (*See* Notice of Opposition, including accompanying Certificate of Service, filed April 27, 2011.) Opposer also complied with the requirements of Trademark Rule 2.101(b), namely, serving a copy of the Notice of Opposition on Applicant at the correspondence address of record. Opposer, via first class mail, sent a copy of its Notice of Opposition to Applicant Christina Goerner at Hodafel Building, 196 Acton Road, Annapolis, Maryland 21403 – the correspondence address of record. (Weeks Decl. ¶ 5.) The U.S. Postal Service did not return the service copy of the Notice of Opposition to Opposer. (Weeks Decl. ¶ 6.)

Moreover, in an abundance of caution, Opposer sent a second copy of the Notice of Opposition and the Board's April 17, 2011 Scheduling Order to Applicant at that same address which was received on June 20, 2011. (*See* Weeks Decl. ¶ 7; Exhibits A-B to Weeks Decl.) Although this case does not involve any mailing error, Opposer's prompt mailing of a courtesy copy of the Notice of Opposition to Applicant after reading in Applicant's Answer that Applicant alleged insufficient service further supports denying Applicant's Motion to Dismiss. *Compare Ameriprise Financial, Inc. v. Thrivent Financial for Lutherans*, Opposition No. 91181329 (TTAB July 29, 2008) (denying motion to dismiss for insufficient service where Opposer mailed service copy of Opposition without including city, state and zip code on the envelope so copy

was returned to opposer who re-mailed it to applicant almost a month later, holding that "opposer's initial attempt at service coupled with its responsive action in rectifying the mailing error was a sufficient effort for purposes of Trademark Rule 2.101(b)."); *Walkaway Canada Inc. v. You Walk Away, LLC*, Opposition No. 91186426, 5 (TTAB Apr. 29, 2009) (denying motion to dismiss for insufficient service where opposer served applicant directly instead of applicant's attorney of record, holding that there was no indication that opposer's failure to serve applicant's counsel directly impacted the progress of efficiency of the proceeding, where applicant promptly filed its answer and the parties conducted the required discovery conference by the deadline).

In addition, Applicant intentionally creates the misimpression that Opposer failed to meet its service obligations by citing three cases in its motion to dismiss that are flatly not on point. (*See* Motion to Dismiss, pp. 4-5.) Further, by placing multiple citations to these cases in footnotes, Applicant's three page discussion of these clearly distinguishable cases creates the false impression that Opposer engaged in the same conduct that is discussed in these cases. In all three cases, *Lucasfilm Ltd. v. Biodroid Entm't, Lda.*, Opposition No. 91191104 (TTAB Sept. 15, 2009), *Schott AG v. Scott*, Opposition No. 91184245 (TTAB November 13, 2008), and *Springfield, Inc. v. XD*, Opposition No. 91180596 (TTAB February 7, 2008), the opposers did not serve a copy of the notice of opposition to applicant on the day on which the opposition was filed with the TTAB, and later sought to amend the notice of opposition to indicate that service on applicant was in fact made on a later date once the error was discovered. Further, in all three cases, there was no evidence that applicants received the Notice of Opposition, as none of the applicants filed answers. Moreover, in *Schott AG*, opposer not only failed to serve copies of two oppositions to applicant, opposer failed to attach any proofs of service.

None of those circumstances exist here. Opposer served Applicant with a copy of its Notice of Opposition on April 27, 2011 – the same date it was filed with the TTAB via the ESTTA system – as plainly evidenced by the certificate of service filed with the Opposition. (Weeks Decl. ¶ 5.) Opposer has not sought to amend its Notice of Opposition for any reason at any time during this proceeding. (*Id.* ¶ 28.) It is undisputed that Applicant received Opposer's Notice of Opposition, as evidenced by (a) Applicant's timely filing of an Answer; (b) Applicant's express acknowledgment of receipt of the Board's Scheduling Order in an email to Opposer's counsel; (c) Applicant's institution of communications to Opposer's counsel to schedule the discovery conference; and (d) the timely accomplishment of the mandatory discovery conference. (*See supra*, pp. 3-6.) Applicant's reliance on its three cited cases is not only misplaced, it is deceptive and misleading, as falsely implying that Opposer engaged in the same conduct that warranted dismissal of those oppositions.

C. Applicant's Motion to Dismiss Should be Denied Because It Is Undisputed That The Purpose Of 37 C.F.R. § 2.101(b) Has Been Satisfied

"The purpose of service in a Board proceeding is to provide notice of the action." *Chocoladefabriken Lindt & Sprungli AG v. Karlo Flores,* Opp. No. 91187963 (TTAB July 30, 2009). It is undisputed that Applicant received Opposer's Notice of Opposition, as evidenced by Applicant's timely filing of an Answer on June 6, 2011. Indeed, attorney Eichelburg expressly stated during the Discovery Conference, "**We have read your Notice of Opposition**." (*See supra*, pp.5-6.) Further, Applicant expressly acknowledged receiving the Board's April 27, 2011 Scheduling Order, and thus also the Notice of Opposition, in an email to Opposer's counsel dated June 22, 2011. (*See* Exhibit C to Weeks Decl.) Applicant's receipt of the Opposition is also evidenced by the fact that Applicant initiated communications with Opposer's counsel multiple times between June 22, 2011 and July 5, 2011 concerning the scheduling of the

discovery conference in this matter. (*See supra*, p. 4, Exhibits C-E to Weeks Decl.) Applicant's receipt of the Opposition is further evidenced by the fact that an individual claiming to be an attorney and to have the name Robert Eichelburg participated in the conference on behalf of Applicant on July 5, 2011, in compliance with the July 6, 2011 deadline. (*See supra*, pp. 4-6.) Where, as here, the defendant actively participates in the proceeding, it is clear that Applicant received sufficient notice of the action and thus the purpose of service is served. *See Chocoladefabriken Lindt & Sprungli AG v. Karlo Flores,* Opp. No. 91187963 (T.T.A.B. July 30, 2009) (denying motion to dismiss for insufficient service, explaining that "Since applicant responded with an answer and a motion to dismiss, opposer's service was clearly sufficient to provide notice to the defendant.") Further, Applicant has not claimed, because it cannot claim, that procedural efficiency has been compromised in any manner. Applicant's timely filing of its Answer, its initiation of communication with Opposer's counsel concerning scheduling of the discovery conference, and participation in the discovery conference, defeat any such assertion.

D. Applicant's Motion to Dismiss Should Be Denied Because No Relief is Available Under FRCP 37(b)(2) or 37 C.F.R. § 2.120(g)(1) Because Settlement Conferences Are Not Required In TTAB Proceedings And Sanctions Are Not Available for Alleged Failure to Participate in Settlement Conferences

In addition to Applicant's allegation that Opposer's Notice of Opposition should be dismissed due to alleged insufficient service, Applicant asks the Board to dismiss the Opposition as a sanction against Opposer's alleged "failure to conduct *bona fides* settlement negotiations." (Motion to Dismiss, pp. 1, 6-7) Applicant alleges that:

> "Title 37 of the Code of Federal Regulations, § 2.120(g)(1) empowers the Board to impose sanctions on any of the parties for failure to participate in settlement conferences. They may make any appropriate order for sanctions including those enumerated in Fed. R. Civ. P. 37 (b)(2). This includes dismissing the action." (*Id*. pp. 6-7.)

Applicant's allegation is a complete misstatement of the law.

Rule 37(b)(2) of the Federal Rules of Civil Procedure concerns sanctions that may be imposed for a party's "failure to comply with a court order." FRCP 37(b)(2). That rule is applicable to TTAB proceedings via 37 C.F.R. § 2.120(g)(1), which states in relevant part:

> "Sanctions. If a party fails to participate in the required discovery conference, or if a party fails to comply with an order of the Trademark Trial and Appeal Board relating to disclosure or discovery, including a protective order, the Board may make any appropriate order, including those provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure."

By its plain language, 37 C.F.R. § 2.120(g)(1) only permits sanctions to be imposed upon a party to a TTAB proceeding for failure to participate in the "required **discovery conference**" or failure to comply with a TTAB order "relating to disclosure or discovery." (emphasis added). Applicant argues that sanctions are warranted for Opposer's alleged failure to participate "**settlement conferences**." There is no requirement that parties involved in a TTAB proceeding conduct settlement discussions or conferences of any kind. The only required conference in TTAB proceedings is the mandatory discovery conference. It is undisputed that Opposer and an individual claiming to be an attorney representing Applicant conducted the mandatory discovery conference on July 5, 2011. Therefore, no sanctions can be imposed for failure to participate in the discovery conference, and Applicant cannot allege as such.

Further, Applicant makes no allegation that sanctions should be imposed based on alleged failure of Opposer to comply with a TTAB order "relating to disclosure or discovery." Nor can it. The only order that has been issued thus far in this proceeding is the Scheduling Order dated April 17, 2011. Opposer has undisputedly complied with the only deadline that has arisen thus far in the proceeding – participation in the mandatory discovery conference on July 5, 2011, meeting the July 6, 2011 deadline. (*See supra*, p. 4.)

Clearly, alleged "failure to participate in settlement conferences," is no basis to dismiss a Notice of Opposition and no relief may be had under FRCP 37(b)(2) or 37 C.F.R. § 2.120(g)(1). Applicant's materially incorrect statement of the law, coupled with its ignorance of the Trademark Rules applicable to this proceeding, warrant a denial of Applicant's Motion to Dismiss on that basis alone.

E. Applicant's Motion To Dismiss Should Be Denied Because The Alleged "Weakness of [Opposer's] Mark" and Opposer's Alleged "Monopolistic Filing of Multiple Oppositions" Are Not Legally Recognized Grounds for Dismissing a Notice of Opposition

Applicant also requests that the Board dismiss Opposer's Notice of Opposition not based on anything that is or is not pleaded in the Notice, but instead based on bald assertions of "the overall weakness of the mark HUDSON standing alone," and "[Opposer's] monopolistic filing of multiple oppositions." (Motion to Dismiss, pp. 3, 7.) That may be the most ridiculous request in a motion that consists of nothing but ridiculous requests.

Federal Rule of Civil Procedure 12, which Applicant invokes, but either has not read or does not understand, sets forth specific defenses which may be asserted by a Motion to Dismiss, including: (1) lack of subject matter jurisdiction; (2) lack of personal jurisdiction; (3) improper venue; (4) insufficient process; (5) insufficient service of process; (6) failure to state a claim upon which relief can be granted; and (7) failure to join a party under Rule 19. FRCP 12(b)(1)-(7). Applicant's asserted grounds of (a) the alleged overall weakness of Opposer's mark or (b) Opposer's alleged monopolistic filing of oppositions are nowhere to be found in Rule 12. They are simply not proper bases for a Rule 12 motion (or any motion for that matter). To the extent that Applicant may be alleging factual defenses against Opposer's claim of likelihood of confusion, such factual defenses cannot support the dismissal of a complaint and should be asserted in summary judgment briefings or during Applicant's trial period.

III. CONCLUSION

Applicant's motion is specious. The author of the motion, Mr. Eichlelberg, claims to be an attorney. For the protection of the resources of the Board and the parties (both Opposer and Applicant, herself), the Board should require that Mr. Eichelberg secure written permission from the Board before he sits down to draft any other motion in this case.

Applicant's Motion to Dismiss should be denied because: (1) Applicant's motion is untimely; (2) Applicant was properly served and Opposer complied with its service obligations; (3) it is undisputed that he purpose of 37 C.F.R. § 2.101(b) has been satisfied; (4) settlement conferences are not required in TTAB proceedings and sanctions are not available for alleged failure to participate in settlement conferences; and (5) the alleged "weakness of [Opposer's] mark" and Opposer's alleged "monopolistic filing of multiple oppositions" are not legally recognized grounds for dismissing a complaint.

Respectfully submitted,

HUDSON CLOTHING, LLC

Dated: August 11, 2011 By: _____

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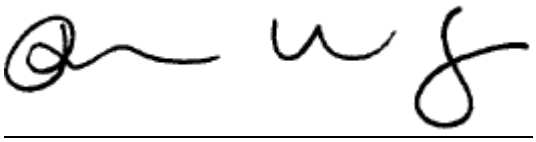
Attorneys for Opposer Hudson Clothing, LLC

CERTIFICATE OF SERVICE

Opposer HUDSON CLOTHING, LLC hereby certifies that a copy of this HUDSON CLOTHING, LLC'S OPPOSITION TO APPLICANT'S MOTION TO DISMISS has been served upon Applicant Christina Goerner on this 11th day of August, 2011, by First Class U.S. Mail, postage prepaid, at the following address:

Christina Goerner
Hodafel Building, 196 Acton Road
Annapolis, MD 21403



Rita Weeks
Attorney for Opposer

ATTORNEY DOCKET NO: 085831-0102

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

HUDSON CLOTHING, LLC, Opposer, v. CHRISTINA GOERNER, Applicant.	Opposition No. 91,199,581 Application Serial No: 85/119,450 Mark: CATHERINE HUDSON

DECLARATION OF RITA WEEKS IN SUPPORT OF OPPOSER HUDSON CLOTHING, LLC'S OPPOSITION TO APPLICANT'S MOTION TO DISMISS

I, Rita Weeks, hereby declare, affirm and state the following:

1. I am an attorney admitted to practice in the state of California and the District of Columbia. I am an associate with the law firm of McDermott Will & Emery LLP, counsel for Opposer Hudson Clothing, LLC ("Opposer") in this proceeding. I have primary responsibility for representing Opposer in this Opposition proceeding.

2. I have direct knowledge of the statements contained herein based upon, among other things, my personal knowledge, my representation of Opposer in this matter and my review of the pleadings filed in this matter.

3. I submit this declaration ("Declaration") in support of Opposer Hudson Clothing, LLC's Opposition to Applicant's Motion to Dismiss.

4. On April 27, 2011, Opposer electronically filed a Notice of Opposition to Applicant's application based upon priority and likelihood of confusion.

5. Attached to Opposer's Notice of Opposition was a "Certificate of Service," wherein Opposer certified that a copy of the Notice of Opposition was served upon Applicant by

first class mail on April 27, 2011 to Applicant's address listed in the application, i.e. Christina Goerner, Hofadel Building, 196 Acton Road, Annapolis, MD 21403. Opposer mailed a copy of its Notice of Opposition to Applicant by first class mail.

6. Subsequent to filing the Notice of Opposition, the U.S. Postal Service did not return the service copy of the Notice of Opposition.

7. On June 17, 2011, after receiving Applicant's Answer and in an abundance of caution, Opposer mailed the Notice of Opposition and the Board's Scheduling Order via Federal Express to Applicant at Applicant's service address of Christina Goerner, Hodafel Building, 196 Acton Road, Annapolis, Maryland 21403. A true and correct copy of the sender's copy of the Federal Express air bill for that mailing is attached to this Declaration as Exhibit A.

8. The Notice of Opposition and Scheduling Order was delivered to Applicant at that address via Federal Express on June 20, 2011. A copy of the proof-of-delivery from Federal Express showing receipt of that mailing is attached to this Declaration as Exhibit B.

9. A true and correct copy of an email dated June 22, 2011 from Applicant Christina Goerner, to me, is attached to this Declaration as Exhibit C. In that email, Applicant expressly acknowledges receiving the Board's April 27, 2011 Scheduling Order, stating: "This email is being sent in compliance with the Trademark Trial and Appeal Board's requirement for both parties to schedule a conference to discuss the items stated in the TTAB's letter mailed April 27, 2011."

10. A true and correct copy of an email dated June 23, 2011 from Applicant Christina Goerner, to me, is attached to this Declaration as Exhibit D.

11. True and correct copies of emails between me and Applicant Christina Goerner between June 23, 2011 and July 5, 2011 are attached to this Declaration as Exhibit E.

12. On July 5, 2011, I participated in the required discovery conference for this proceeding.

13. To my surprise, an individual claiming to be an attorney and to have the name "Robert Eichelburg" participated in the conference on behalf of Applicant Christina Goerner, instead of Applicant herself.

14. Before the telephone conference of that day, Applicant never stated to Opposer that she was being represented by an attorney in this matter or mentioned an individual named Mr. Eichelburg.

15. As of today, August 11, 2011, no attorney has made an appearance for Applicant in this proceeding.

16. Before Mr. Eichelburg would proceed with the conference, he insisted that I confirm that the telephone call was not being recorded, and that the call was not being conducted via speakerphone.

17. During the July 5 teleconference, Mr. Eichelburg was utterly ignorant of Board Procedure and was even unaware (or at least claimed to be unaware) of the topics that were required to be discussed.

18. After confirming that no one was listening, Mr. Eichelburg asked me, in sum or substance, "well what do you want to talk about?"

19. I responded to Mr. Eichelburg that we must discuss the topics required to be discussed by the Board rules, and started with the topic concerning "the nature of and basis for [the parties'] claims and defenses."

20. Before I could utter a sentence explaining the bases for Opposer's claims, Mr. Eichelburg cut me off, stating, "we have read your Notice of Opposition" and to move on to the next topic.

21. I next turned to the discussion of the topic "the possibility of settling the case or at least narrowing the scope of claims or defenses." I explained that it would be helpful to have certain information concerning Applicant's intended business in order to facilitate possible settlement.

22. Mr. Eichelburg began to provide certain information, but stopped suddenly and stated that he needed to speak to his client. Mr. Eichelburg then ended the discovery conference.

23. At no point during the discovery conference did Mr. Eichelberg state that Applicant had not been properly served with the Notice of Opposition.

24. At no point during the discovery conference did Mr. Eichelburg request another copy of the Notice of Opposition.

25. At no point during the discovery conference, did the individual claiming to be attorney Eichelburg state that he intended to file a motion to dismiss the opposition for lack of proper service.

26. Applicant did not meet and confer with Opposer before filing her motion to dismiss.

27. Before the filing of Applicant's motion to dismiss, Opposer had no idea that Opposer was considering filing the motion.

28. Opposer has not sought to amend its Notice of Opposition for any reason at any time during this proceeding.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Washington, DC on August 11, 2011.

Rita Weeks

TTAB Opposition No. 91,199,581

Exhibit A

To

Declaration of Rita Weeks In Support of Opposer Hudson Clothing, LLC's Opposition to Applicant's Motion to Dismiss

FedEx Express **US Airbill**

FedEx Tracking Number 8735 2793 7764

MUR31

Form ID No. 0215

Sender's Copy

1 From *Please print and press hard.*

Date 6/16/11 Sender's FedEx Account Number SENDER'S FEDEX ACCOUNT NUMBER ONLY 0250-4578-7

Sender's Name R. Weeks Phone (202) 756-8010

Company MCDERMOTT WILL & EMERY LLP

Address 600 13TH ST NW STE 1200 Dept./Floor/Suite/Room

City WASHINGTON State DC ZIP 20005-3096

2 Your Internal Billing Reference First 24 characters will appear on invoice. 085831-0101

3 To Recipient's Name Christina Goerner Phone (410) 263-0416

Company

Address Hodafel Building Dept./Floor/Suite/Room

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address 196 Acton Road

Use this line for the HOLD location address or for continuation of your shipping address.

City Annapolis State MD ZIP 21403

☐ **HOLD Weekday** FedEx location address REQUIRED. NOT available for FedEx First Overnight.

☐ **HOLD Saturday** FedEx location address REQUIRED. Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

0425657342

4a Express Package Service * To most locations. *Packages up to 150 lbs.*

- ☐ FedEx Priority Overnight — Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☒ FedEx Standard Overnight — Next business afternoon.* Saturday Delivery NOT available.
- ☐ FedEx First Overnight — Earliest next business morning delivery to select locations.*
- ☐ FedEx 2Day — Second business day.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx Express Saver — Third business day.* Saturday Delivery NOT available.

4b Express Freight Service ** To most locations. *Packages over 150 lbs.*

- ☐ FedEx 1Day Freight — Next business day.** Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected. CALL 1-800-238-5355 FedEx 1Day Freight Booking No.
- ☐ FedEx 2Day Freight — Second business day.** Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx 3Day Freight — Third business day.** Saturday Delivery NOT available.

5 Packaging * Declared value limit $500.

☒ FedEx Envelope* ☐ FedEx Pak* Includes FedEx Small Pak and FedEx Large Pak. ☐ FedEx Box ☐ FedEx Tube ☐ Other

6 Special Handling and Delivery Signature Options

☐ SATURDAY Delivery NOT available for FedEx Standard Overnight, FedEx Express Saver, or FedEx 3Day Freight.

☒ No Signature Required — Package may be left without obtaining a signature for delivery.
☐ Direct Signature — Someone at recipient's address may sign for delivery. Fee applies.
☐ Indirect Signature — If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.

Does this shipment contain dangerous goods?

One box must be checked.

☒ No ☐ Yes As per attached Shipper's Declaration. ☐ Yes Shipper's Declaration not required. ☐ Dry Ice Dry Ice, 9, UN 1845 ____ x ____ kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box.

☐ Cargo Aircraft Only

7 Payment *Bill to:*

Enter FedEx Acct. No. or Credit Card No. below.

☒ Sender Acct. No. in Section 1 will be billed. ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check

FedEx Acct. No. Credit Card No. Exp. Date

Total Packages ____ Total Weight ____ lbs. Total Declared Value† $ ____ .00

†Our liability is limited to $100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

605

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Or let our pros pack for you with FedEx Office℠ Pack & Ship.

TTAB Opposition No. 91,199,581

Exhibit B

To

Declaration of Rita Weeks In Support of Opposer Hudson Clothing, LLC's Opposition to Applicant's Motion to Dismiss

FedEx Express
Customer Support Trace
3875 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4643

Telephone: 901-369-3600

August 11,2011

Dear Customer:

The following is the proof-of-delivery for tracking number **873527937764**.

Delivery Information:

Status:	Delivered	**Delivered to:**	Residence
Signed for by:	Signature not required	**Delivery location:**	196 ACTON RD 21403
Service type:	Standard Envelope	**Delivery date:**	Jun 20, 2011 12:36

NO SIGNATURE REQUIRED
Proof-of-delivery details appear below; however, no signature is available for this FedEx Express shipment because a signature was not required.

Shipping Information:

Tracking number:	873527937764	**Ship date:**	Jun 17, 2011

Recipient:
CHRISTINA GOERNER
-
196 ACTON RD HADAFEL BLDG
21403 US

Shipper:
R WEEKS
MCDERMOTT WILL & EMERY LLP
600 13TH ST NW STE 1200
200053096 US

Reference 085831-0101

Thank you for choosing FedEx Express.

FedEx Worldwide Customer Service
1.800.GoFedEx 1.800.463.3339

TTAB Opposition No. 91,199,581

Exhibit C

To

Declaration of Rita Weeks In Support of Opposer Hudson Clothing, LLC's Opposition to Applicant's Motion to Dismiss

Weeks, Rita

From: Christina Goerner [bartbags@verizon.net]
Sent: Wednesday, June 22, 2011 8:51 PM
To: Weeks, Rita
Cc: lawofficerje@aol.com
Subject: Opposition No. 91199581 - Scheduling Pre Discovery Conference

Dear Ms. Weekes,

This e mail is being sent in compliance with the Trademark Trial and Appeal Board's requirement for both parties to schedule a conference to discuss the items stated in the TTAB's letter mailed April 27, 2011.
We would like to schedule the conference, if convenient to your schedule, for Wednesday, June 29, 2011 at 3:00 p.m. and we will initiate the call. Please confirm by e mail to bartbags@verizon.net.

Sincerely,

Christina Goerner
bartbags@verizon.net

TTAB Opposition No. 91,199,581

Exhibit D

To

Declaration of Rita Weeks In Support of Opposer Hudson Clothing, LLC's Opposition to Applicant's Motion to Dismiss

Weeks, Rita

From: Christina Goerner [bartbags@verizon.net]
Sent: Thursday, June 23, 2011 6:30 PM
To: Weeks, Rita
Cc: lawofficesrje@aol.com; Christina Goerner
Subject: Trademark Trial and Appeal Board - Opposition No. 91199581 Hudson Clothing, LLC v. Christina Goerner

Dear Counsel:

In accordance with the guidelines set forth by the TTAB, we propose a Pre-Discovery Conference for July 29, 2011 at 3:00 p.m.

Please let us know if that date is convenient to your scheduling. If so, we will initiate the call.

Sincerely,

Christina Goerner
bartbags@verizon.net

TTAB Opposition No. 91,199,581

Exhibit E

To

Declaration of Rita Weeks In Support of Opposer Hudson Clothing, LLC's Opposition to Applicant's Motion to Dismiss

Weeks, Rita

From: Catherine Hudson [bartbags@verizon.net]
Sent: Tuesday, July 05, 2011 2:33 PM
To: Weeks, Rita
Cc: lawofficesrje@aol.com
Subject: Re: RE: RE: RE: Trademark Trial and Appeal Board - Opposition No. 91199581 Hudson Clothing, LLC v. Christina Goerner

Rita, 4:00 p.m. today is confirmed. Thank you for the e mail. --Christina

Jul 5, 2011 12:25:38 PM, RWeeks@mwe.com wrote:

Hello Christina.

I am in a meeting that has ran over - can we push our discovery conference back to later this afternoon? Say to 4pm? Thank you very much for your understanding. Alternatively, I am available anytime tomorrow if you happen to have any availability.

Rita Weeks

McDermott Will & Emery LLP

600 13th Street, N.W. | Washington, D.C. 20005-3096
direct: 202.756.8092 | fax: 202.756.8087

www.mwe.com | rweeks@mwe.com

-

From: Catherine Hudson [mailto:bartbags@verizon.net]
Sent: Tuesday, June 28, 2011 10:52 AM
To: Weeks, Rita
Subject: Re: RE: RE: Trademark Trial and Appeal Board - Opposition No. 91199581 Hudson Clothing, LLC v. Christina Goerner

-

Rita,

--

2:00 pm on July 5th confirmed. We will initiate the call.

Christina

Jun 28, 2011 08:16:48 AM, RWeeks@mwe.com wrote:

How about anytime after 12pm on July 5?

Rita Weeks

McDermott Will & Emery LLP

600 13th Street, N.W. | Washington, D.C. 20005-3096
direct: 202.756.8092 | fax: 202.756.8087

www.mwe.com | rweeks@mwe.com

From: Catherine Hudson [mailto:bartbags@verizon.net]
Sent: Tuesday, June 28, 2011 8:42 AM
To: Weeks, Rita
Subject: Re: RE: Trademark Trial and Appeal Board - Opposition No. 91199581 Hudson Clothing, LLC v. Christina Goerner

Rita,

We are not available on that day. Since the deadline for the discovery conference is July 6, 2011 and discovery begins that day, are you available or another attorney on July 5 (we are flexible on time).

Christina

Jun 27, 2011 11:44:14 AM, RWeeks@mwe.com wrote:

Christina,

It looks like I am going to be out of the office again most of the week this week. Are you available to conduct the discovery conference next week, on Wed. July 6 at 3pm?

Regards,

Rita

Rita Weeks
McDermott Will & Emery LLP
600 13th Street, N.W. | Washington, D.C. 20005-3096
direct: 202.756.8092 | fax: 202.756.8087
www.mwe.com | rweeks@mwe.com

-----Original Message-----
From: Christina Goerner [mailto:bartbags@verizon.net]
Sent: Friday, June 24, 2011 6:38 AM
To: Weeks, Rita
Subject: Re: Trademark Trial and Appeal Board - Opposition No. 91199581 Hudson Clothing, LLC v. Christina Goerner

Rita,

Sure, we will wait to hear from you Monday.

Regards,

Christina

On Jun 23, 2011, at 6:33 PM, Weeks, Rita wrote:

> Christina,
>
> I am out of the office this week at depositions. I believe that I am available on July 29 at 3pm, but can we tentatively schedule the call and I confirm on Monday when I return to the office?
>
> Thanks,
>
> Rita Weeks
>
> Rita Weeks
> McDermott Will & Emery LLP
> 600 13th Street, N.W. | Washington, D.C. 20005-3096
> direct: 202.756.8092 | fax: 202.756.8087 www.mwe.com | rweeks@mwe.com

>
>
> -----Original Message-----
> From: Christina Goerner [mailto:bartbags@verizon.net]
> Sent: Thursday, June 23, 2011 6:30 PM
> To: Weeks, Rita
> Cc: lawofficesrje@aol.com; Christina Goerner
> Subject: Trademark Trial and Appeal Board - Opposition No. 91199581 Hudson Clothing, LLC v. Christina Goerner
>
> Dear Counsel:
>
> In accordance with the guidelines set forth by the TTAB, we propose a Pre-Discovery Conference for July 29, 2011 at 3:00 p.m.
>
> Please let us know if that date is convenient to your scheduling. If so, we will initiate the call.
>
> Sincerely,
>
> Christina Goerner
> bartbags@verizon.net
>
>
>
****
> IRS Circular 230 Disclosure: To comply with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained herein (including any attachments), unless specifically stated otherwise, is not intended or written to be used, and cannot be used, for the purposes of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter herein.
>
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