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

Proceeding	91200488
Party	Plaintiff Color Image Apparel, Inc.
Correspondence Address	LINDSAY HULLEY TRESSLER LLP 18100 VON KARMAN AVENUE, SUITE 800 IRVINE, CA 92612 UNITED STATES octmdocket@tresslerllp.com
Submission	Other Motions/Papers
Filer's Name	Lindsay J. Hulley
Filer's e-mail	octmdocket@tresslerllp.com
Signature	/Lindsay J. Hulley/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No.: 85/166,228
For the Trademark: BELLA BIRD
Published in the Official Gazette on June 28, 2011

Color Image Apparel, Inc., a California
corporation,

Opposer,

v.

DownEast Outfitters, Inc., a Utah
corporation,

Applicant.

Opposition No. 91200488

OPPOSER/REGISTRANT'S MOTION TO STRIKE

NOW COMES opposer and registrant Color Image Apparel, Inc. ("CIA") by and through its undersigned counsel, and hereby moves the Board for an Order striking the prayer for an award of attorneys' fees contained in applicant DownEast Outfitters, Inc.'s ("Applicant") Answer to CIA's Notice of Opposition. CIA brings this motion pursuant to Rule 12(b)(f) of the Federal Rules of Civil Procedure and §506 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP").

I. ARGUMENT

Although motions to strike are generally not favored, the Board has the authority to strike impermissible pleadings and will do so in appropriate cases. Fed.R.Civ.P. 12(f); Ohio State University v. Ohio University, 51 U.S.P.Q.2d 1289, 1292 (T.T.A.B. 1999).

In the prayer of its answer to the Notice of Opposition, Applicant prays for an award of reasonable attorneys' fees incurred in the defense of this action. See Answer, at p. 7. However,

attorneys' fees and other expenses are never awarded in Board proceedings. TBMP §502.05; Trademark Rule 2.127(f); Duke University v. Hagggar Clothing Co., 54 U.S.P.Q.2d 1443 (T.T.A.B. 2000).

Accordingly, Applicant's prayer for an award of reasonable attorneys' fees is impermissible and should be struck.

WHEREFORE, CIA prays that the Board, pursuant to Fed.R.Civ. P. 12(b)(f) and TBMP §506, enter an Order striking the prayer for an award of attorneys' fees contained in Applicant's Answer.

Dated: September 2, 2011

Respectfully submitted,
/Lindsay J. Hulley/
Lindsay J. Hulley
Tressler, LLP
18100 Von Karman, Suite 800
Irvine, CA 92612
Tel: (949) 336-1200
Fax: (949) 752-0645
Attorneys for Opposer,
COLOR IMAGE APPAREL, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is the attorney for Opposer Color Image Apparel, Inc., in the above-captioned Opposition proceeding and that on the date which appears below, she caused a copy of the foregoing **OPPOSER/REGISTRANT'S MOTION TO STRIKE** to be served on the following by first class mail service:

Applicant:

DownEast Outfitters, Inc.
375 West Hope Avenue
Salt Lake City, Utah 84115

Counsel for Applicant:

Casey W. Jones
Strong & Hanni
3 Triad Center, Suite 500
Salt Lake City, Utah 84180-1125

Dated: Irvine, California
September 2, 2011

/Lindsay J. Hulley/
Lindsay J. Hulley