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

Proceeding	91201125
Party	Plaintiff 9228-4330 QuÃ©bec, Inc.
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Submission	Motion to Amend Pleading/Amended Pleading
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No.: 85/160,126
For the mark PRIVÉ

9228-4330 Québec, Inc. Opposer, vs. Fortrend Group LLC, Applicant.	)	Opposition No. 91201125

AMENDED NOTICE OF OPPOSITION

Opposer, 9228-4330 Québec, Inc. a Canadian corporation organized under the laws of Québec having a principal place of business at 9600 Meilleur, #1050, Montreal, QC, Canada H2N 2E3 ("Opposer") believes that it will be damaged by the registration of the mark show in Application Serial No. 85/160,126 for the mark PRIVÉ (the "Mark") and opposed same on August 11, 2011. In light of amendments to the Application made by Fortrend Group LLC's ("Applicant") and re-publication of the Application, Opposer amends its Notice of Opposition.

I. FACTS

1. Opposer operates a web-based business, Privé, from the domain name www.prive.com. Opposer provides exclusive access to limited-time shopping events with a curated selection of leading designer brand clothing at up to 70% off of retail

prices. Should it register, the Application could be cited as the basis of a refusal to register an application for Opposer's "Privé" mark.

2. On October 25, 2010, Applicant filed an application to register "PRIVÉ" under Section 1(a) of the Lanham Act for use in connection with the following services in International Class 35: retail consignment store services; consignment services, namely, promoting and marketing the goods of others; Online retail consignment services featuring a variety of consumer goods ("the Services"). The application was assigned Serial No. 85/160,126 (the "Application").

3. Applicant claimed first use of the Mark in connection with the Services anywhere at least as early as June 2007 and first use in interstate commerce as early as June 2007.

4. On February 4, 2011, the Services were amended via Examiner's Amendment to: "retail consignment stores featuring clothing, shoes, handbags, jewelry, home goods, bedding and linens, glassware, silverware, and action sports apparel; consignment services, namely, promoting and marketing the goods of others; online retail consignment stores featuring a variety of consumer goods."

5. The Application was published for Opposition on April 12, 2011.

6. On May 10, 2011, Opposer filed a request for a 30-day extension of time to oppose the Application with the Trademark Trial and Appeal Board ("TTAB"), which was granted on May 10, 2011.

7. On June 2, 2011, Opposer requested a further 60-day extension of time to oppose the Application from the TTAB, which was granted on June 6, 2011.

8. On July 28, 2011, Applicant filed an amendment to the dates of first use of "retail consignment stores featuring clothing, shoes, handbags, jewelry, home goods, bedding and linens, glassware, silverware, and action sports apparel; consignment services, namely promoting and marketing the goods of others." It alleged first use of these services anywhere as of September 30, 2008 and first use in commerce as of September 30, 2008. It alleged that it date of first use of "online retail consignment stores featuring a variety of consumer goods" anywhere was March 25, 2010 and first use of these services in commerce was March 25, 2010.

9. Applicant's amendment to the dates of first use in the application were not supported by an affidavit or declaration under 37 C.F.R. §2.20. 37 C.F.R. §2.71(c).

10. On August 2, 2011, Applicant's post-publication amendments were erroneously accepted by the Trademark Office.

11. On August 11, 2011, Opposer filed a Notice of Opposition with the TTAB, which was assigned No. 91201125.

12. The Application was re-published on October 4, 2011.

13. On November 15, 2011, Applicant filed the Answer with the TTAB.

14. Upon information and belief, Applicant did not use the Mark in commerce in connection with "online retail consignment stores featuring a variety of consumer goods" at least as early as June 2007 as alleged in the Application as filed on October 25, 2010.

15. Upon information and belief, Applicant was not using the Mark in commerce in connection with "online retail consignment stores featuring a variety of consumer goods" as of the filing date of the Application, October 25, 2010.

16. Upon information and belief, Applicant is not currently using the Mark in commerce in connection with "online retail consignment stores featuring a variety of consumer goods."

II. FIRST CLAIM: THE MARK WAS NOT IN USE IN COMMERCE PRIOR TO THE FILING OF THE USE-BASED APPLICATION

17. Paragraphs 1-16 are incorporated by reference.

18. Upon information and belief, Applicant did not make a bona fide use of the Mark on the Services in commerce prior to the filing of the use-based Application on October 25, 2010 under Trademark Act § 1(a), 15 U.S.C. § 1051(a).

19. By reason of the foregoing, Opposer will be damaged if the Application achieves registration.

II. SECOND CLAIM: THE AMENDMENT TO THE DATES OF FIRST USE IN COMMERCE WAS NOT SUPPORTED BY AN AFFIDAVIT OR DECLARATION UNDER 37 C.F.R. §2.71(c)

20. Paragraphs 1-19 are incorporated by reference.

21. In an application under §1(a) of the Trademark Act, an applicant may amend the dates of use to adopt a date of use that is later than the date originally stated, but before the application filing date. However, the applicant may not amend to specify a date of use that is later than the filing date of the application. 37 C.F.R. §2.71(c)(1).

22. Applicant filed an amendment to its date of first use of the Mark in commerce in connection with "online retail consignment stores featuring a variety of consumer goods" to March 25, 2010, the day that the Application was filed. An amendment to the date of first use of the Mark in commerce after March 25, 2010 would not have been accepted by the Trademark Office.

23. The amendment to the dates of first use of the Mark in commerce was not supported by an affidavit or declaration under 37 C.F.R. §2.20. 37 C.F.R. §2.71(c) and was therefore defective.

24. The amendment to the dates of first use of the Mark in commerce was accepted in error by the Trademark Office.

25. By reason of the foregoing, Opposer will be damaged if the Application achieves registration.

III. THIRD CLAIM: APPLICANT DID NOT HAVE A BONA FIDE INTENT TO USE THE MARK AS OF THE FILING DATE

26. Paragraphs 1-25 are incorporated by reference.

27. Applicant did not have a bona fide intent to use the mark in connection with the Services as of the filing date of the application under Trademark Act § 1(b), 15 U.S.C. § 1052(b).

28. By reason of the foregoing, Opposer will be damaged if the Application achieves registration.

IV. FOURTH CLAIM: FRAUD

29. Paragraphs 1-28 are incorporated by reference.

30. Applicant committed fraud during the prosecution of its application for registration. On the Application filing date, October 25, 2010, Applicant represented to the Trademark Office that it began using the Mark in commerce in connection with the Services at least as early as June 2007. Upon information and belief, as of the Application filing date, the Mark was not in use in connection with any online services.

31. Upon information and belief, the representations Applicant made to the Trademark Office on October 25, 2010 regarding the dates of first use of the Mark in commerce were false. Applicant has not used the Mark in commerce to date in connection with some or all of the Services.

32. On July 28, 2011, Applicant filed an amendment to the dates of first use of the Mark in commerce in connection with "online retail consignment stores featuring a variety of consumer goods."

33. The July 28, 2011 amendment is suspect because it was not supported by a declaration or affidavit.

34. The July 28, 2011 amendment is suspect because Applicant alleges the Application filing date as the date of first use of the Mark in commerce in connection with "online retail consignment stores featuring a variety of consumer goods." The Application filing date is the last possible day that Applicant was permitted to amend its allegation of use to.

35. The July 28, 2011 amendment is suspect because it was made in anticipation of the filing of the Notice of Opposition by Opposer.

36. Applicant knew that its statements regarding the dates of first use of the Mark in commerce made on October 25, 2010 and on July 28, 2011 were false. Applicant made these statements with the intent to deceive the Trademark Office in order to procure a registration.

37. The Trademark Office relied upon the material misrepresentations of Applicant during examination of the Application. The Trademark Office would not have approved

Applicant's mark for publication but for the Applicant's material misrepresentations regarding use of the Mark in commerce made on October 25, 2010 and on July 28, 2011.

38. Applicant's actions while attempting to procure a registration for the Mark constitute fraud, thereby invalidating the Application.

39. By reason of the foregoing, Opposer will be damaged if the Application achieves registration.

WHEREFORE, Opposer requests that Application Serial No. 85/160,126 be refused registration in its entirety. Alternatively, Opposer requests that Application Serial No. 85/160,126 be refused registration in connection with the online services in the Application.

Dated: December 6, 2011

Respectfully submitted,
ELLENOFF GROSSMAN & SCHOLE LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of December 2011, a true and correct copy of the Amended Notice of Opposition was served on Counsel for Applicant via First Class Mail:

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