

ESTTA Tracking number: **ESTTA442287**

Filing date: **11/21/2011**

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

Proceeding	91202055
Party	Defendant Boutique Newcity (Public) Company Limitedd
Correspondence Address	JENNIFER D. SILVERMAN ELLENOFF GROSSMAN & SCHOLE LLP 150 E 42ND ST FL 11 NEW YORK, NY 10017-5659 pto@egslp.com
Submission	Answer
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Date	11/21/2011
Attachments	SWITCH - Answer (00182378).PDF (5 pages)(33769 bytes)

2. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2 of the Notice of Opposition and therefore denies the same.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 3 of the Notice of Opposition and therefore denies the same.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 4 of the Notice of Opposition and therefore denies the same.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 5 of the Notice of Opposition and therefore denies the same.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of the Notice of Opposition and therefore denies the same.

7. Applicant denies the allegations in Paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations in Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations in Paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations in Paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations in Paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations in Paragraph 13 of the Notice of Opposition.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 14 of the Notice of Opposition and therefore denies the same.

15. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 15 of the Notice of Opposition and therefore denies the same.

16. Applicant denies the allegations in Paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations in Paragraph 17 of the Notice of Opposition.

First Affirmative Defense

18. Applicant's and Opposer's marks are spelled and pronounced differently. Additionally, the marks have different meanings and connotations – Applicant's mark was chosen in an arbitrary manner whereas, as indicated on Swatch's website (http://www.swatchgroup.com/en/services/archive/2008/the_amazing_adventures_of_the_second_watch) Swatch's mark is a derivation of the term "Second Watch." Applicant's

and Opposer's marks create different commercial impressions whereby there is no likelihood of confusion.

Second Affirmative Defense

19. Upon information and belief, the goods/services sold by Opposer and Applicant are distinct and therefore no likelihood of confusion exists. The parties do not sell any of the same goods. Specifically, Applicant offers high-fashion women's apparel and Opposer offers novel, inexpensive plastic watches. Notably, only two of Opposer's marks are registered for apparel items (Reg. Nos. 1980517 and 3799562). Both registrations are registered for very limited apparel items:

Reg. No. 1980517: *T-shirts, neckties, scarves and caps*

Reg. No. 3799562: *Down vests, wind resistant jackets; ski boots*

Opposer's marks are apparently used in connection with sporty, utilitarian apparel items as well as men's accessories, products which Applicant does not manufacture or sell.

Third Affirmative Defense

20. Upon information and belief, Opposer and Applicant sell their goods in distinct channels of trade and therefore no likelihood of confusion exists.

Fourth Affirmative Defense

21. There are numerous third-party U.S. trademark registrations for marks containing the word SWITCH, all of which are used in connection with apparel products. These marks all co-exist with Opposer's marks without causing any confusion among consumers.

Fifth Affirmative Defense

22. Upon information and belief, Opposer is not using and does not have a bona fide intent to use the mark SWATCH on the pleaded apparel items. Applicant reserves its right to petition to cancel Opposer's Reg. Nos. 3799562 and 1980517.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed with prejudice and that Notice of Allowance be issued to Applicant on its Application Serial No. 85/073,174 and/or the Board grant to Applicant such other and/or further relief as the Board may deem just and proper.

Dated: November 21, 2011

Respectfully submitted,
ELLENOFF GROSSMAN & SCHOLE LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **ANSWER** was served by first class mail to Opposer's counsel addressed as follows:

Jess M. Collen
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By: /saryn e. leibowitz/

Dated: November 21, 2011