

**DEFENDANTS ANSWER TO NOTICE OF OPPOSITION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MICHELLE HICKS and PETER OSELLA
Applicants

v.

SELMENA TRADING LIMITED
Opposer

Applicant Serial No.: 85352968
Filed: June 22, 2011
Response to Opposition: January 7, 2012
Mark: LIVE VANILLA. DIE VANILLA.

Applicant Information

Application No.	85352968	Publication Date	11/08/2011
Opposition Filing Date	11/29/2011	Opposition Period Ends	12/08/2011
Defendants' Answer to Opposition Filing Date	01/07/2012	Defendants' Answer Period Ends	01/08/2012

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Michelle Hicks
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e-mail: michellehicks2003@yahoo.com

Opposers: Selmena Trading Limited (LLC), Cyprus
Theklas Lysiotti 35 Eagle Star House. 5th Floor
Limassol, 3030 CYPRUS



01-10-2012

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DEFENDANTS' ANSWER TO NOTICE OF OPPOSITION

Defendants, Peter Osella and Michelle Hicks, Trademark Applicants and representing themselves directly in accordance with § 2.17 Recognition for Representation and serves as Proof of Service in accordance with Trademark Rule § 2.119.

The defendants having a place of business located at 312 N. May Street #2D, Chicago, IL 60607, believe it is highly unlikely Selmena Trading Limited, a LLC with a place of business located in Limassol, Cyprus will be damaged by the registration of the LIVE VANILLA. DIE VANILLA. Mark, application serial No. 85352968.

We believe a comparison of the differences in Goods and Services, Target Markets, Price Points and Geographies planned for the LIVE VANILLA. DIE VANILLA. Brand will demonstrate there will be no likelihood of confusion as defined by the Trademark Act section 2(d).

Goods and Services Affected by Opposition

Class 025.

All goods and services in the class are opposed namely: Dress shirts; Hats; Skirts; T-shirts

Grounds for Opposition

Priority and likelihood of confusion. Trademark Act section 2(d)

Opposer Comments: #1,2,3,4 and 5, Attorney Docket No. 10824-8052

Selmena Trading Limited possesses the VANILIA mark (US Trademark Registration No. 2,677,171) for clothing, namely ladies trousers, tee shirts, sweatshirts, knitwear, cardigans, skirts and dresses.

Defendants Answer to Opposer Comments #1, 2,3,4 and 5:

The LIVE VANILLA. DIE VANILLA. mark will be marketed and sold as

unisex garments with no particular focus on women's clothing. The mark will be utilized primarily as a lifestyle philosophy phrase. The mark will be applied to casual unisex clothing (dress shirts, hats, t-shirts and skirts) in support of this lifestyle philosophy. The application for the LIVE VANILLA. DIE VANILLA. mark (Application Serial No. 85352968) specifically mentions dress shirts and hats, in addition to the skirts and t-shirts elements included in the limited scope of the trademark for which VANILIA currently claims use. We believe the LIVE VANILLA. DIE VANILLA. mark and product line included in our application are clearly distinct from both the VANILIA mark and the line of women's clothing currently being designed and sold by Selmena Trading LLC.

There appears to be very limited evidence, little recognition or commercial presence of the VANILIA brand in the United States since the mark was issued on January 21, 2003. Based upon our preliminary search, the VANILIA clothing line appears to be sold and marketed primarily in Europe, with only one North American shop located in Montreal, Canada. Consequently, we, as defendants, contest the assertion that the mark "has established extremely valuable goodwill in its VANILIA mark by virtue of its quality products for sale under the VANILIA mark in the United States."

Opposer Comments: #6, 7 and 8, Attorney Docket No. 10824-8052

Selmena Trading Limited asserts that we, as applicants for the LIVE VANILLA. DIE VANILLA trademark are "in the business of designing, developing and selling women's clothing."

Defendants Answer to Opposer Comments #6,7 and 8:

The LIVE VANILLA. DIE VANILLA. brand and mark are for the purpose of promoting a lifestyle philosophy. We do intend to design and sell unisex clothing that will prominently display the mark in its entirety as included in our application. While we do expect that women will comprise a portion of our customers, our products will be sold to men, women and children of all ages.

Presently, no products are actively being sold and marketed so we, as defendants, also contest the assertion made by Selmena Trading LLC on page one of its Notice of Opposition that the company "is being damaged, and will be damaged by Michelle Hicks and Peter Osella's ("Applicants") registration of the mark LIVE VANILLA. DIE VANILLA. " In the absence of any goods or services being actively marketed or sold at this time, we see no evidence of these assertions. And in addition, we do not believe damages are likely to occur in the future following issuance of our mark given the differences we've described within this document.

Opposer Comments: #9,10,11,12 and 13, Attorney Docket No. 10824-8052
Selmena Trading Limited asserts that their VANILIA mark has been in commerce continuing since prior to the filing date of the opposed application” and our LIVE VANILLA. DIE VANILLA mark is “confusingly similar in sound, appearance, connotation, and overall commercial impression to opposer’s VANILIA mark and covers goods identical or closely related to those offered by Opposer under its mark.”

Further, Selmena Trading LLC, asserts that our LIVE VANILLA. DIE VANILLA. mark so resembles Opposer’s previously used and registered mark as to be likely, when used in connection with Applicants’ goods covered by Application Serial No. 85/352,968, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, as amended, 15 U.S.C. §1052(d).”

Defendants Answer to Opposer Comments #9,10,11,12 and 13:

We, as applicants for the LIVE VANILLA. DIE VANILLA. mark believe there are sufficient and significant differences in the goods and services where our mark will be used from the goods and services under the VANILIA mark to support issuance of our trademark.

There are, we believe, significant differences in the existing VANILIA mark and the Proposed LIVE VANILLA. DIE VANILLA. mark as to eliminate any possible confusion, mistakes or deception. (See Exhibit 1.)

Furthermore, as described in earlier sections of this document, LIVE VANILLA. DIE VANILLA. will include different types of goods (lifestyle philosophy and unisex clothing) vs (solely women’s clothing- VANILIA) and be marketed to a broader customer demographic (men, women and children in the United States) vs (solely women, primarily Europe-VANILIA) as to further reduce the likelihood of confusion, mistakes or deception.

WHEREFORE we, as applicants and defendants, believe it is highly unlikely and the chances remote that confusion will exist between our LIVE VANILLA. DIE VANILLA. lifestyle philosophy mark and the women’s clothing mark VANILA, we ask that United States Patent and Trademark Office and Appeal Board, approve our application, No. 85352968.

Respectfully Submitted,

By: 
Michelle Hicks, Applicant

By: 
Peter Osella, Applicant

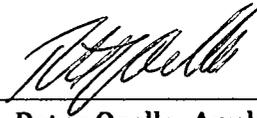
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Phone: 908-285-2714

Direct Representation in accordance with § 2.17
Recognition for representation

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Defendants Answer to the Notice of Opposition received December 6, 2011 was served by Express United States Mail prepaid on this the 7th day of January, 2012, on opposer at the following address of record listed below and in accordance with Trademark Rule § 2.126.

Lawrence Robins
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.
55 Cambridge Parkway, Suite 700
Cambridge, MA 02142 UNITED STATES



Peter Osella, Applicant

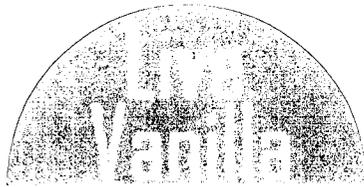
EXHIBIT 1

Examples of VANILIA mark.

vanilia



Examples of LIVE VANILLA. DIE VANILLA mark.



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