

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

In the matter of Application Serial No. 85/375,935
for the mark: ONE LOVE

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|-------------------------------------|--|--------------------------|
| _____) | | |
| Fifty-Six Hope Road Music Limited) | | |
| Opposer) | | |
| v.) | | Opposition No. 91-204913 |
| Samtani (Jamaica) Ltd.) | | |
| dba Tropicana Jewelers) | | |
| Applicant) | | |
| _____) | | |

APPLICANT'S MOTION FOR SUMMARY JUDGMENT

Applicant, Samtani (Jamaica) Ltd. dba Tropicana Jewelers, moves the Honorable Trademark Trial and Appeal Board for summary judgment. Because the record shows no genuine issue of material fact based on the uncontested facts, the law entitles Applicant to summary judgment.

Respectfully submitted,

HINMAN HOWARD & KATTELL LLP

Dated: September 4, 2013

By:


Mark Levy
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S MOTION FOR SUMMARY JUDGMENT was served on counsel for Opposer, this 4th day of September 2013, by sending same via First Class Mail to:

Jill M. Pietrini, Esq.
SHEPPARD MULLIN RICHTER & HAMPTON LLP
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Respectfully submitted,

HINMAN HOWARD & KATTELL LLP

Dated: September 4, 2013

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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Respectfully submitted,

HINMAN HOWARD & KATTELL LLP

Dated: September 4, 2013

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BRIEF IN SUPPORT OF APPLICANT'S
MOTION FOR SUMMARY JUDGMENT

This brief is in support of Applicant's Motion for Summary Judgment.

1. On July 20, 2011, Applicant acted in good faith and filed an application to register the mark, ONE LOVE, for Applicant's goods (i.e., jewelry, namely, bracelets and rings) in the U.S. Patent and Trademark Office, which application was assigned Serial No. 85/375,935. The mark was published for opposition on December 20, 2011 in the Official Gazette in accordance with 15 U.S.C. §1062.

2. On April 16, 2012, Opposer filed an opposition in the U.S. Patent and Trademark Office based on Opposer's use of the mark, ONE LOVE as recited in Opposer's pending trademark and service mark applications for "entertainment services in the nature of live

musical performances; organizing cultural festivals featuring music, dance, art exhibitions and heritage markets; providing information on a website relating to music, entertainment, and cultural festivals of others; and music publishing services” (Ser. No. 77/549,263); “bar and restaurant services; catering; coffee bars; health resort services, namely, providing food and lodging that specialize in promoting patrons’ general health and well-being; hotel services; providing advice to tourists and business travelers on hotel and restaurant destinations; rental of beach chairs, towels and umbrellas for recreational use; resort lodging services; and wine bars” (Ser. No. 77/782,232); “cloth bibs; infant and toddler one piece clothing; hats; shirts; sweat shirts; tank-tops” (Ser. No. 77/233,644); and “hotel, bar and restaurant services” (Ser. No. 77/344,663), now abandoned.

3. None of the foregoing, unregistered, pending applications recites jewelry, nor does Opposer assert any use of the mark on jewelry, namely, bracelets and rings. Opposer’s answer to Applicant’s interrogatories states that Opposer uses the mark only for “cloth bibs, infant and toddler one piece clothing, hats, shirts, sweat shirts, and tank-tops... musical sound recordings ...charitable services, and on beverage products” (answer to Interrogatory no. 6).

4. Since Opposer and Applicant do not dispute the above facts, there is no genuine issue for trial. The TTAB is requested to grant summary judgment in favor of Applicant because, as discussed below, the law dictates such result.

5. Applicant has been the owner of the ONE LOVE mark since 2004 and has been using the mark for jewelry continuously for the last 9 years.

6. The respective marks of Opposer and Applicant travel in separate channels of trade: Int'l. Classes 25, 41, and 43 for Opposer versus Int'l. Class 14 for Applicant. Therefore, there is no likelihood of confusion as to the origin of the parties' goods or services in which the goods or services bearing the parties' respective marks are distributed, sold, or advertized. *Polaroid Corp. v. Polarad Elect. Corp.*, 287 F.2d 492 (2nd Cir. 1961). The respective marks can peacefully co-exist, since the goods and services provided by the parties under their respective marks are not similar or even related and consumers are not likely to think that the jewelry is being made by the entertainment, bar and restaurant services, and infant apparel company, or vice versa.

7. There is no genuine issue of material fact or basis upon which Opposer may oppose Applicant's mark. Therefore, Opposer should be estopped from continuing this frivolous opposition action.

8. The law entitles Applicant to relief. Accordingly, Applicant respectfully requests that summary judgment be granted in favor of Applicant.

Respectfully submitted,

HINMAN HOWARD & KATTELL LLP

Dated: September 4, 2013

By:



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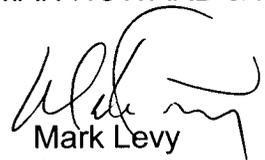
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