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

Proceeding	91212519
Party	Plaintiff Hint Incorporated
Correspondence Address	LORI S KOZAK BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 12400 WILSHIRE BLVD, 7TH FLOOR LOS ANGELES, CA 90025-1040 UNITED STATES lori_kozak@bstz.com, garbo_tat@bstz.com, tm_filings@bstz.com
Submission	Opposition/Response to Motion
Filer's Name	Lori S. Kozak
Filer's e-mail	lori_kozak@bstz.com, garbo_tat@bstz.com, tm_filings@bstz.com
Signature	/Lori S. Kozak/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Hint, Inc. Opposer, v. Sunrise Apparel Group, LLC Applicant	)	Opposition No. 91212519 Application Serial No. 85/587640 for the Mark HINT in Class 18

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO AMEND APPLICATION AND ANSWER TO NOTICE OF OPPOSITION

Applicant has filed a motion to amend its application to register the mark HINT to restrict the identification of goods by inserting a limitation that the goods are "sold through the retail outlet Vanity." Applicant also seeks to amend its Answer to the Notice of Opposition to rely upon such amendment, arguing that the amendment restricts the identification of goods, "negating any likelihood of confusion." Opposer hereby opposes such amendment on various grounds and submits that such amendment is vague and ambiguous and inappropriate under Trademark Office procedure, should not be accepted, and would not, in any case, obviate the likelihood of confusion in the instance case.

I. The Amendment is Vague and Ambiguous, And Should Not be Granted

Applicant's amendment restricts the identification of goods to those items "sold through the retail outlet Vanity." What is the retail outlet Vanity? Is the Board required to investigate

this to determine its meaning? Is Opposer? The meaning and nature of this restriction is unclear on the face of the proposed amendment.

It is Opposer's understanding, based on discussions with opposing counsel, that "the retail outlet Vanity" may refer to a nationwide retail chain that also sells online through the Internet at www.evanity.com (and perhaps elsewhere?). Opposer does not know if there are other "retail outlets" named Vanity, that sell other or similar products, nor does Opposer know whether Vanity sells its products through other channels of trade (such as through third party commerce websites such as Amazon.com). In any event, even presuming that we clarified the specific entity to which the proposed amendment refers, that would not restrict "Vanity" from expanding its channels of trade in the future or being acquired by another company with a broader distribution network.

II. The Amendment is Insufficient to Obviate a Likelihood of Confusion

Opposer does not believe that the proposed amendment is sufficient to obviate a finding of likelihood of confusion. There are no restrictions on the channels of trade in Opposer's registrations. Thus, they are presumed to move in all normal channels of trade, and are available to all classes of purchasers.

It is well-settled that if a registration describes goods or services broadly, and there is no limitation as to their nature, type, channels of trade, or class of purchasers, it is presumed that the registration encompasses all goods or services of the type described, that they move in all normal channels of trade, and that they are available to all classes of purchasers. See Trademark Manual of Examining Procedure, Section 1207.01(a)(iii); *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1373, 107 USPQ2d 1167, 1173 (Fed. Cir. 2013); *In re Thor Tech,*

Inc., 90 USPQ2d 1634, 1638 (TTAB 2009) ("We have no authority to read any restrictions or limitations into the registrant's description of goods."); *In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006). Therefore, if the cited registration has a broad identification of goods or services, an applicant does not avoid likelihood of confusion merely by more narrowly identifying its related goods. *See, e.g.*, *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992) (noting that, where registrant's goods are broadly identified as "computer programs recorded on magnetic disks," without any limitation as to the kind of programs or the field of use, it must be assumed that registrant's goods encompass all such computer programs, including computer programs of the type offered by applicant, that they travel in the same channels of trade normal for such goods, and that they are available to all classes of prospective purchasers of those goods); *In re Diet Ctr., Inc.*, 4 USPQ2d 1975 (TTAB 1987) (noting that, although applicant had limited its identification to indicate that its goods were sold only through franchised outlets offering weight-reduction services, the cited registration's identification contained no limitations as to trade channels or classes of customers and thus it must be presumed that registrant's goods travel through all the ordinary channels of trade); *In re Uncle Sam Chem. Co.*, 229 USPQ 233 (TTAB 1986) (finding that although applicant's cleaning preparations and degreasers were limited to those for industrial and institutional use, registrant's liquid preparations for cleaning woodwork and furniture, as identified, were not restricted to any particular trade channels or classes of customers and thus could presumably be used for institutional and industrial purposes).

III. Applicant's Motion is Unconsented and Applicant Has Not Consented to Entry of Judgment as to the Broader Description of Goods

In order for an unconsented motion to amend the application in substance to be approved before final judgment or decision on summary judgment, the Applicant must consent to

entry of judgment on the question of likelihood of confusion with the goods or services to be deleted. TTAB Manual Section 514.01. This would mean that Applicant would agree to a judgment that likelihood of confusion exists for all goods listed in the application that are not sold through the retail outlet Vanity (whatever that means; again, Opposer submits that the amendment is vague and ambiguous).

In Applicant's motion, Applicant states that "Applicant consents to an entry of judgment with respect to the broader identification of goods, reserving the right to keep the original identification should the Board find that Applicant is entitled to registration without the proposed amendment." The second phrase, containing a reservation of rights, negates the consent in the first part of the sentence. Thus, Applicant has not truly consented to an entry of judgment against the broader identification of goods, and the amendment should not be granted. TTAB Manual Section 514.01.

IV. Trademarks Should not be Used in an Identification of Goods

Although unclear, Applicant's proposed amendment appears to seek to incorporate a third party trademark into its identification of goods, which is generally considered to be inappropriate. Trademark Manual of Examining Procedure Section 1402.09. It is unclear whether "the retail outlet Vanity" would consent to having its alleged trademark used in this manner, or might object to use of its alleged mark in this way.

For all of the aforementioned reasons, Opposer respectfully requests that the Board deny Applicant's motion to amend its application, and deny the accompanying motion to amend the

Answer to the Notice of Opposition to rely upon such amendment to the identification of goods in its application as an affirmative defense.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN

12/9/13

Lori Kozak
12400 Wilshire Blvd., Seventh Floor
Los Angeles, CA 90025
(310) 207-3800

PROOF OF SERVICE

I, Garbo Tat, hereby declare that I am employed by the law firm of BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, 12400 Wilshire Boulevard, Seventh Floor, Los Angeles, California 90025-1040; that I am over 18 years of age and not a party to the within action; and that I served the following document: OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO AMEND APPLICATION AND ANSWER TO NOTICE OF OPPOSITION, this 9th day of December, 2013, by causing a true copy to be deposited in the United States Mail, first class postage prepaid to Applicant at the following address:

Jill M. Pietrini
SHEPPARD MULLIN RICHTER & HAMPTON, LLP
1901 Avenue of the Stars, Ste 1600
Los Angeles, CA 90067-6055

Date: 12/9/13

Name: Garbo Tat