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

Proceeding	91212768
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

INTS It Is Not The Same, GmbH,

Opposer,

v.

Disidual Clothing, LLC,

Applicant.

Serial No. 85/836,544

Opposition No. 91212768

Mark: DISIDUAL

ANSWER TO REVISED FIRST AMENDED NOTICE OF OPPOSITION

Applicant Disidual Clothing, LLC (“Disidual Clothing” or “Applicant”), by and through its attorneys, Marshall, Gerstein & Borun LLP, responds to INTS It Is Not The Same, GmbH’s (“INTS”) Revised First Amended Notice of Opposition (“Revised Notice of Opposition”) filed on June 15, 2016, as follows:

1. The Applicant, Disidual Clothing, LLC, a Limited Liability Company organized under the laws of Washington and located at 4208 Meridan Street, Bellingham, Washington, 98226, has filed an application to register the “DISIDUAL” mark for use in connection with “apparel, namely, t-shirts, tank-tops, shorts, hats, jackets, sweatshirts, hooded sweatshirts, beanies, socks, pants, dresses, swimsuits, knit face masks, gloves, belts” in International Class 025. Said application was filed on January 30, 2013 under Section 1(a) of the Trademark Act, was assigned U.S. Application No. 85/836,544 and was published for Opposition in the Official Gazette on August 27, 2013. Applicant’s application was filed based on use of the mark claiming a date of first use of at least as early as June 1, 2010 and a date of first use in commerce of at least as early as June 1, 2010.

ANSWER: Admitted.

2. Opposer is a leading manufacturer and seller of various products in various international classes, including clothing in International Class 025.

ANSWER: Disidual Clothing is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Revised Notice of Opposition and therefore denies them.

COUNT 1 – PRIORITY AND LIKELIHOOD OF CONFUSION

3. Commencing long prior to Applicant’s filing date and alleged date of first use in commerce, Opposer has engaged, and is now engaged in the manufacture, distribution, sale, advertising, and promotion in interstate commerce of clothing in International Class 025.

ANSWER: Disidual Clothing is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Revised Notice of Opposition and therefore denies them.

4. In connection therewith, Opposer is the owner of the following marks:

- a. the “DESIGUAL AND DESIGN” mark, U.S. Registration No. 2,088,319, filed on January 23, 1996 and registered on the Principal Register on August 12, 1997, for “clothing, namely footwear and headwear” in International Class 025. *See* [Exhibit A, U.S. Reg. No. 2,088,319].

ANSWER: Disidual Clothing is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4a of the Revised Notice of Opposition and therefore denies them.

- b. the “DESIGUAL (Stylized)” mark, U.S. Registration No. 3,737,499, filed on October 25, 2007 and registered on the Principal Register on January 12, 2010, for “bleaching preparations for household use and other substances, namely, laundry detergent for laundry use; cleaning, polishing,

scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices” in International Class 003, “sunglasses, spectacle cases, spectacle frames, sports glasses, contact lenses, cases for contact lenses, chains and cords for glasses, namely, pince-nez; scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking, supervision, life-saving and teaching apparatus and instruments, namely, sensing and signaling devices for measurement and quality control of materials processing by laser; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely, splices for electrical transmission lines, power-line transmission machines and apparatus; apparatus for recording, transmission or reproduction of sound or images; blank magnetic data carriers, blank record discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus” in International Class 009, “handbags, purses, traveling bags, backpacks, haversacks, traveling sets made of leather, namely, suitcases; trunks; umbrellas; parasols and walking sticks; purses made of leather; whips, harnesses and saddlery; wallets made of leather” in International Class 018, and “ready-made clothing for women, men and children, namely, pants, shorts, shirts, T-shirts, jackets, blouses, skirts, dresses; footwear; headgear, namely, hats and caps” in International Class 025. *See* [Exhibit B, U.S. Reg. No. 3,737,499].

ANSWER: Disidual Clothing is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4b of the Revised Notice of Opposition and therefore denies them.

- c. the “DESIGUAL AND DESIGN” mark, U.S. Registration No. 3,982,329, filed on February 12, 2010 and registered on the Principal Register on June 21, 2011, for “bleaching preparations for household use and other substances, namely, laundry detergent for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices” in International Class 003, “sunglasses, spectacle cases, spectacle frames, sports glasses, contact lenses, cases for contact lenses, chains and cords for glasses, namely, pince-nez; scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking, supervision, life-saving and teaching apparatus and instruments, namely, sensing and signaling devices for measurement and quality control of materials processing by laser; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely, splices for electrical transmission lines, power-line transmission machines and apparatus; apparatus for recording, transmission or reproduction of sound or images; blank magnetic data carriers, blank record discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus” in International Class 009, “handbags, purses, traveling bags, backpacks, haversacks, traveling sets made of

leather, namely, suitcases; trunks; umbrellas; parasols and walking sticks; purses made of leather; whips, harnesses and saddlery; wallets made of leather” in International Class 018, “ready-made clothing for women, men and children, namely, pants, shorts, shirts, T-shirts, jackets, blouses, skirts, dresses; footwear; headgear, namely, hats and caps” in International Class 025, “retail shops for clothing, fashion and home design accessories of all kinds; dissemination of advertisements; modelling for advertising or sales promotion; organisation of trade fairs for commercial or advertising purposes; advertising services; direct mail advertising” in International Class 035, and “distribution services, namely, delivery of clothing, fashion and home design accessories” in International Class 039. *See* [Exhibit C, U.S. Reg. No. 3,982,329].

ANSWER: Disidual Clothing is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4c of the Revised Notice of Opposition and therefore denies them.

- d. the “DESIGUAL (Stylized)” mark, U.S. Registration No. 4,113,640, filed on May 26, 2011 and registered on the Principal Register on March 20, 2012, for “bed linen, namely, bed blankets, bed spreads, bed covers, bed pads, pillow cases, mattress covers, bed sheets, sheet sets, duvets; table linen, namely, table cloths, not of paper, place mats, not of paper; towels; travelling rugs; bath linen, except clothing, namely, shower curtains” in International Class 024 and “retail store services featuring all kinds of ready-made clothing and accessories in the fields of fashion and design; dissemination of advertising matter; modeling for advertising or sales

promotion; organization of trade fairs for commercial or advertising purposes; advertising; direct mail advertising” in International Class 035. *See* [Exhibit C, U.S. Reg. No. 4,113,640].

ANSWER: Disidual Clothing is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4d of the Revised Notice of Opposition and therefore denies them.

- e. the “DESIGUAL (Stylized)” mark, U.S. Registration No. 4,269,396, filed on October 17, 2011 and registered on the Principal Register on January 1, 2013, for “precious metals and their alloys; goods of precious metals or coated therewith, not included in other classes, namely, rings, bracelets, necklaces and watches; jewelry, precious stones; horological and chronometric instruments” in International Class 014 and “furniture mirrors, picture frames; goods, not included in other classes, of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials or of plastics, namely, chairs, poufs, pillows, armchairs, stools, umbrella stands, tables” in International Class 020. *See* [Exhibit C, U.S. Reg. No. 4,269,396].

ANSWER: Disidual Clothing is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4e of the Revised Notice of Opposition and therefore denies them.

- f. the “DESIGUAL” mark, a common law mark used by Opposer since at least as early as 1995 for “clothing, footwear, and headwear” in International Class 025.

[Hereinafter collectively referred to as Opposer's "DESIGUAL" Marks].

ANSWER: Disidual Clothing is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4f of the Revised Notice of Opposition and therefore denies them.

5. Opposer's use of its "DESIGUAL AND DESIGN" mark, as reflected by U.S. Reg. No. 2,088,319, has been continuous, exclusive, public, and substantial since a date of first use in commerce at least as early as March 17, 1995. Opposer's use of its common law "DESIGUAL" mark has been continuous, exclusive, public, and substantial since a date of first use in commerce at least as early as 1995. Opposer's use of its "DESIGUAL (Stylized)" mark, as reflected by U.S. Reg. No. 3,737,499, has a constructive first use date of October 25, 2007. Opposer's use of its "DESIGUAL AND DESIGN" mark, as reflected by U.S. Reg. No. 3,982,329, has a constructive first use date of February 12, 2010. Opposer's use of its "DESIGUAL (Stylized)" mark, as reflected by U.S. Reg. No. 4,113,640, has a constructive first use date of May 26, 2011. Opposer's use of its "DESIGUAL (Stylized)" mark, as reflected by U.S. Reg. No. 4,269,396, has a constructive first use date of October 17, 2011.

ANSWER: Disidual Clothing is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Revised Notice of Opposition and therefore denies them.

6. Such first use dates and constructive first use dates for Opposer's "DESIGUAL" Marks are long prior to the filing date of Applicant's "DISIDUAL" mark, Application No. 85/836,544, filed on January 30, 2013 and claiming a date of first use in commerce of June 1, 2010.

ANSWER: Disidual Clothing admits that the filing dates and claimed dates of first use in Opposer's registrations recited in Paragraph 5 are prior to the filing date for Application No.

85/836,544. Disidual Clothing is without knowledge or information sufficient to form a belief as to the validity of Opposer's claimed registrations, the dates of first use alleged therein, or the other allegations contained in Paragraph 6 of the Revised Notice of Opposition and therefore denies them.

7. Applicant's "DISIDUAL" mark would be confusingly similar because:

a. the mark is confusingly similar in appearance to Opposer's "DESIGUAL" Marks;

ANSWER: Denied.

b. the mark is confusingly similar in sound to Opposer's "DESIGUAL" Marks;

ANSWER: Denied.

c. the mark is confusingly similar in connotation to Opposer's "DESIGUAL" Marks;

ANSWER: Denied.

d. the goods of Opposer and the goods of Applicant are closely related and/or marketed through the same or overlapping channels of trade and/or to the same classes of consumers;

ANSWER: Denied.

e. Opposer's "DESIGUAL" Marks enjoy a high level of distinctiveness.

ANSWER: Denied.

8. Since Opposer's initial use of Opposer's "DESIGUAL" Marks, Opposer has made a substantial investment in advertising and promoting its goods under its trademarks. Opposer has extensively used, advertised, promoted and offered Opposer's goods and rendered services bearing Opposer's "DESIGUAL" Marks to the public through various channels of trade

in commerce, with the result that Opposer's customers and the public in general have come to know and recognize Opposer's "DESIGUAL" Marks and associate the same with Opposer and/or goods sold by Opposer and/or services rendered by Opposer. As a result of such extensive use and advertisement, Opposer's customers and the public in general will in the future know and recognize Opposer's "DESIGUAL" Marks and associate the same with Opposer and/or the goods sold by Opposer and/or services rendered by Opposer.

ANSWER: Disidual Clothing is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Revised Notice of Opposition and therefore denies them. Disidual Clothing also denies that Opposer's customers and the public in general will associate the DISIDUAL mark with Opposer or Opposer's goods or services.

9. Opposer's "DESIGUAL" Marks constitute the lawful, valued, subsisting, and exclusive property of the Opposer. As a result of the high quality of Opposer's goods and services that are sold under Opposer's "DESIGUAL" Marks, and the extensive sales and advertising made under Opposer's "DESIGUAL" Marks, the aforementioned marks have become an intrinsic and essential part of the valuable goodwill and property of Opposer, and are recognizable and associated by the public as a symbol identifying and distinguishing Opposer's goods and services as those of exceptional quality.

ANSWER: Disidual Clothing is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Revised Notice of Opposition and therefore denies them.

10. Applicant's "DISIDUAL" mark, U.S. Application No. 85/836,544, so resembles Opposer's "DESIGUAL" Marks as to be likely to cause confusion or mistake, to suggest a connection, or to deceive purchasers into believing that Applicant's goods originate with the

Opposer, and/or are endorsed or sponsored by the Opposer, and/or that Applicant and/or its goods are otherwise affiliated with the Opposer and its goods.

ANSWER: Denied.

11. Use of Applicant's "DISIDUAL" mark will inexorably have an adverse effect upon the value of Opposer's "DESIGUAL" Marks. If this Opposition is not sustained, any defect, objection to, or fault found with Applicant's goods provided under the "DISIDUAL" mark would necessarily reflect on and seriously injure the valuable goodwill and reputation that Opposer has established, and will establish, for its goods and services.

ANSWER: Denied.

12. Based on the foregoing arguments, registration of the mark "DISIDUAL" for use in connection with "apparel, namely, t-shirts, tank-tops, shorts, hats, jackets, sweatshirts, hooded sweatshirts, beanies, socks, pants, dresses, swimsuits, knit face masks, gloves, belts" in International Class 025, as found in U.S. Application No. 85/836,544, filed on January 30, 2013 and published for Opposition in the Official Gazette on August 27, 2013, will cause injury and damage to Opposer.

ANSWER: Denied.

13. Opposer therefore respectfully requests that this opposition be sustained and Applicant's application to register the "DISIDUAL" mark be refused.

ANSWER: Paragraph 13 contains no factual allegations that require a response. Disidual Clothing acknowledges that Opposer has requested that the Board sustain its opposition, but denies that Opposer is entitled to the relief it seeks.

COUNT 2 – APPLICANT’S MARK IS VOID AB INITIO FOR FAILURE TO USE THE MARK AT THE TIME THE USE-BASED APPLICATION WAS FILED

14. During discovery in this matter, Applicant produced no documentary or other evidence of its use of the “DISIDUAL” mark in commerce on belts, gloves, dresses, and knit face masks at the time of filing its use-based “DISIDUAL” trademark application.

ANSWER: Admitted.

15. Despite Opposer’s Requests for documents, Applicant produced no documents relating to its creation, development, marketing, advertising and/or sale of belts, gloves, dresses, and knit face masks bearing the “DISIDUAL” trademark at the time it filed its trademark application.

ANSWER: Admitted.

16. Applicant admitted in Response to Opposer’s Requests for Production #2 that it has not used the “DISIDUAL” mark on dresses, belts, and gloves.

ANSWER: Denied.

17. At the time Applicant filed its “DISIDUAL” trademark application, Applicant did not use the “DISIDUAL” mark in U.S. commerce in connection with all of the goods identified in the “DISIDUAL” application, as required by 15 U.S.C. § 1051(a).

ANSWER: Admitted.

18. Opposer therefore respectfully requests that the implicated goods be removed from the application, because Applicant’s application is *void ab initio* for failure to the use mark at the time the use-based application was filed.

ANSWER: Paragraph 18 contains no factual allegations that require a response. Disidual Clothing acknowledges that Opposer has requested the relief described, but denies that Opposer is entitled to the relief it seeks. Specifically, Disidual Clothing identifies the Board’s order dated August 5, 2016, which stated that Disidual Clothing’s entire application would not be *void ab*

initio even if Opposer were to prove that only some, but not all of the goods in Disidual Clothing's use-based application were in use as of the filing date.

COUNT 3 – APPLICANT HAS ABANDONED ITS MARK THROUGH NONUSE

19. At the time Applicant filed its "DISIDUAL" trademark application, Applicant did not use the "DISIDUAL" mark in U.S. commerce in connection with all of the goods identified in the "DISIDUAL" application, as required by 15 U.S.C. § 1051(a).

ANSWER: Admitted.

20. During discovery in this matter, Applicant produced no documentary or other evidence of its use of the "DISIDUAL" mark in commerce on belts, gloves, dresses, and knit face masks at the time of filing its use-based "DISIDUAL" trademark application.

ANSWER: Admitted.

21. Despite Opposer's Requests for documents, Applicant produced no documents relating to its creation, development, marketing, advertising and/or sale of belts, gloves, dresses, and knit face masks bearing the "DISIDUAL" trademark at the time it filed its trademark application.

ANSWER: Admitted.

22. Applicant admitted in its Response to Opposer's Requests for Production #2 that it has not used the "DISIDUAL" mark on dresses, belts, and gloves, despite the fact that the trademark application was filed based on use in commerce.

ANSWER: Denied.

23. Applicant's trademark application claims a first use in commerce date of June 1, 2010. Applicant has abandoned the "DISIDUAL" trademark as a result of the past six years of non-use of the mark on belts, gloves, dresses, and knit face masks.

ANSWER: Denied.

24. Applicant abandoned its “DISIDUAL” mark long prior to the filing of this Notice of Opposition, and Applicant has no intention of commencing or resuming use of the mark on belts, gloves, dresses, and knit face masks in the future.

ANSWER: Denied.

25. Opposer therefore respectfully requests that the implicated goods be removed from the application, because Applicant’s mark is abandoned with regard to those goods.

ANSWER: Paragraph 25 contains no factual allegations that require a response. Disidual Clothing acknowledges that Opposer has requested that the Board strike certain goods from Disidual Clothing’s application, but denies that Opposer is entitled to the relief it seeks.

COUNT 4 – FRAUD ON THE USPTO

24. At the time Applicant filed its “DISIDUAL” trademark application, Applicant did not use the “DISIDUAL” mark in U.S. commerce in connection with all of the goods identified in the “DISIDUAL” application, as required by 15 U.S.C. § 1051(a).

ANSWER: Admitted.

25. Applicant claimed a June 1, 2010 date of first use and first use in commerce of its mark in association with all of its goods, which include “Apparel, namely, t-shirts, tank tops, shorts, hats, jackets, sweatshirts, hooded sweatshirts, beanies, socks, pants, dresses, swimsuits, knit face masks, gloves, belts.”

ANSWER: Admitted.

26. During discovery in this matter, Applicant produced no documentary or other evidence of its use of the “DISIDUAL” mark in commerce on belts, gloves, dresses, and knit face masks at the time of filing its use-based “DISIDUAL” trademark application.

ANSWER: Admitted.

27. Despite Opposer's Requests for documents, Applicant produced no documents relating to its creation, development, marketing, advertising, and/or sale of belts, gloves, dresses, and knit face masks bearing the "DISIDUAL" trademark at the time it filed its trademark application.

ANSWER: Admitted.

28. Applicant admitted in Response to Opposer's Requests for Production #2 that it has not used the "DISIDUAL" mark on dresses, belts, and gloves, despite the fact that the trademark application was filed based on use in commerce.

ANSWER: Denied.

29. In Applicant's trademark application, filed January 30, 2013, Applicant declared under oath, being warned that willful false statements, and the like, may jeopardize the validity of the declaration, that "The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended." The Applicant went on to state that "[t]he mark was first used at least as early as 06/01/2010 and first used in commerce at least as early as 06/01/2010, and is now in use in such commerce.

ANSWER: Admitted.

30. Applicant knowingly, with an intent to deceive the United States Patent and Trademark Office, included within its use-based trademark application a number of goods on which the mark was not in use, including, dresses, belts, gloves, and knit face masks in International Class 025.

ANSWER: Denied.

31. Such knowing false or fraudulent statements were relied on by authorized agents of the U.S. Patent and Trademark Office to publish for opposition U.S. Trademark Application

No. 85/836,544 for the mark “DISIDUAL”, and, reasonably relying on the truth of such false statements, the U.S. Patent and Trademark Office did, in fact, publish the mark for opposition in the name of Applicant.

ANSWER: Denied.

32. Applicant is therefore not entitled to continue to seek to register U.S. Trademark Application No. 85/836,544 for the mark “DISIDUAL”, because Applicant committed fraud in filing its trademark application based on use in commerce. The Declarations accompanying the trademark application also contained fraudulent statements regarding Applicant’s alleged use of its mark in commerce on all of the goods in the Identification of Goods for the mark. The Applicant’s trademark application is therefore void.

ANSWER: Denied.

AFFIRMATIVE DEFENSES

A. The Revised Notice of Opposition fails to state a claim upon which relief may be granted.

B. The Opposition is barred by laches.

COUNTERCLAIM

CANCELLATION OF REGISTRATION NO. 2,088,319

Disidual Clothing believes that it will be damaged by the continued registration of the mark DESIGUAL (Stylized), Reg. No. 2,088,319, and therefore requests cancellation of the registration due to INTS’s abandonment of the mark. Disidual Clothing requests full cancellation of Reg. No. 2,088,319 and in support states as follows:

1. INTS (or its predecessor-in-interest; collectively, “INTS”) filed Ser. No. 75,047,585 to register DESIGUAL (Stylized) on January 23, 1996, for “clothing, namely

footwear and headwear” in International Class 25. INTS claimed a first use date of March 17, 1995. INTS’s application was published on August 27, 1996, and registered on August 12, 1997.

2. To maintain its registration, INTS filed Section 8 and 15 Declarations of Use and Incontestability affirming use on February 3, 2003. The declaration stated that “The owner has used the mark in commerce for five consecutive years after the date of registration . . . and is still using the mark in commerce on or in connection with all goods and/or services listed in the existing registration.” As presently, at the time the registration identified “clothing, namely footwear and headwear” in International Class 25.

3. With its Section 8 and 15 declarations filed on February 3, 2003, INTS provided a specimen described as “a scanned image of a tag” that bore the mark. No specimens were provided showing the mark applied to the footwear and headwear identified in the registration.

4. Subsequently, INTS filed Section 8 and 9 Declarations of Use and Renewal on October 25, 2006. The declaration stated that “For International Class 025, the owner, or its related company, is using the mark in commerce on or in connection with all goods or services listed in the existing registration for this class.” As presently, at the time the registration identified “clothing, namely footwear and headwear” in International Class 25.

5. With its Section 8 and 9 declaration filed on October 25, 2006, INTS provided a specimen described as “a digital image of the mark affixed to the goods” depicting the mark affixed to a hooded sweatshirt. According to the U.S. Acceptable Identification of Goods and Services Manual, “hooded sweatshirts” is an identification within Class 25. Hooded sweatshirts, however, are not identified in the registration and, therefore, the submitted specimen does not establish use on goods covered by the registration. Moreover, the specimen depicts the mark in an ornamental use, not as a trademark. *See* Trademark Manual of Examining Procedure §

1202.03. No specimens were provided showing the mark applied to the footwear and headwear identified in the registration. Use was not properly established sufficient for renewal in 2006.

6. A complete and valid declaration under Section 8 of the Lanham Act must be signed and verified by a declaration affirming use on all of the identified goods or services and accompanied by a specimen showing current use of the mark. 37 C.F.R. § 2.161. Specifically, the specimen must “[s]how the mark as actually used on or in connection with the goods.” *Id.*

7. No specimen has ever been filed with the U.S. Patent and Trademark Office showing the mark as actually used on or in connection with the identified headwear and footwear as required by 37 C.F.R. § 2.161.

8. As indicated in Paragraphs 2-5, INTS has never properly established use of the mark by providing the U.S. Patent and Trademark Office with a specimen showing the mark used on any of the identified goods.

9. Additionally, a search of INTS’s desigual.com retail website reveals no trademark uses of the design mark on the goods identified in the registration—footwear and headwear—or on any other goods. See Exhibit A.

10. During discovery in this matter, INTS produced no documentary or other evidence of its current use of the mark DESIGUAL (Stylized), as shown in Reg. No. 2,088,319, on or in connection with the registered goods.

11. During discovery in this matter, INTS produced no documentary or other evidence of any current sales of the registered goods bearing the mark DESIGUAL (Stylized), as shown in Reg. No. 2,088,319.

12. On information and belief, the DESIGUAL (Stylized) mark covered by Reg. No. 2,088,319 is not presently in use as a trademark on the registered goods.

13. On information and belief, and despite INTS's Section 8 declarations in 2003 and 2006, the DESIGUAL (Stylized) mark shown in Reg. No. 2,088,319 has not been used as a trademark on the identified goods.

14. Pursuant to 15 U.S.C. § 1064(3), Reg. No. 2,088,319 has been abandoned and should be cancelled in full.

WHEREFORE, Disidual Clothing requests that the Board deny the opposition, cancel Reg. No. '319, and allow its '544 application to register.

Respectfully submitted,

Dated: August 25, 2016

/Craig A. Beaker/
Gregory J. Chinlund
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Attorneys for
DISIDUAL CLOTHING, LLC

CERTIFICATE OF SERVICE

The undersigned counsel affirms that the ANSWER TO REVISED FIRST AMENDED NOTICE OF OPPOSITION was served by first class mail, postage prepaid, on the date set forth below upon the following:

John S. Egbert
Egbert Law Offices, PLLC
1314 Texas, 21st Floor
Houston, TX 77002

Dated: August 25, 2016

/Craig A. Beaker/
Craig A. Beaker