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

Proceeding	91213743
Party	Defendant Al-Jazeera Satellite Channel
Correspondence Address	KEVIN G SMITH SUGHRUE MION PLLC 2100 PENNSYLVANIA AVE NW , SUITE 800 WASHINGTON, DC 20037-3202 UNITED STATES tm@sughrue.com, ksmith@sughrue.com, vmullineaux@sughrue.com, gkrugman@sughrue.com, mwhite@sughrue.com
Submission	Reply in Support of Motion
Filer's Name	Gary D. Krugman
Filer's e-mail	tm@sughrue.com, vmullineaux@sughrue.com
Signature	/Gary D. Krugman/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re U.S. Application Serial No. 85/639,289
Mark: BEIN SPORT

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BE SPORT, INC.,		:
		:
	Opposer,	:
		:
	v.	:
		:
AL-JAZEERA SATELLITE CHANNEL,		:
		:
	Applicant.	:
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Opposition No. 91213743

**APPLICANT'S REPLY BRIEF IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

Applicant, by its attorneys, hereby files this Reply Brief in Support of its Motion for Summary Judgment.¹

Opposer's position, in essence, is that the Motion for Summary Judgment must be denied because "it is self-evident that Applicant's BEIN and BEIN SPORT marks convey different commercial impressions . . ." Opposer argues that the second opposition is not based on the same transactional facts that should have been litigated in the prior opposition since the two opposed marks, BEIN and BEIN SPORT, are assertedly too dissimilar to convey the same commercial impression. Opposer asserts that the inclusion of the word "SPORT" in Applicant's BEIN SPORT mark evokes the sense of a person's participation or interest in sports, and then

¹ Applicant recognizes that its Motion for Leave to Amend Answer to assert the affirmative defense of *res judicata*, which is the basis of Applicant's Motion for Summary Judgment, has not yet been ruled upon by the Board. Nevertheless, inasmuch as Opposer has filed a Brief in Opposition to the Motion for Summary Judgment, applicant is filing this short Reply Brief.

concludes, remarkably, that the inclusion of SPORT in Applicant's BEIN SPORT is far more than a minor, insignificant difference compared to its first BEIN mark because SPORT is ". . . a descriptive term that identifies the very nature of Applicant's goods and services (as well as Be Sport's) . . ."

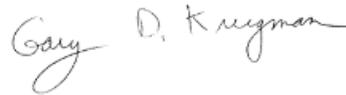
The fact that SPORT is a non-distinctive and highly descriptive term which identifies the very nature of (some of) Applicant's goods and services and which identifies the very nature of Opposer's goods and services is precisely why the addition of the term SPORT to Applicant's mark BEIN does not engender a commercial impression sufficiently different from that engendered by the mark BEIN, *per se*. Where, as here, there is already a final judgment against Opposer in the earlier opposition filed against Applicant's BEIN mark, based on likelihood of confusion with Opposer's BE SPORT mark, Opposer should be precluded from litigating the same likelihood of confusion based opposition against the BEIN SPORT mark.

Opposer had a full and fair opportunity to litigate the opposition against the registration of Applicant's BEIN mark. Opposer, however, took no testimony and offered no other evidence in support of its claims of likelihood of confusion, claims which were identical to the claims set forth herein. In view thereof, judgment in the earlier opposition was entered against Opposer and in favor of Applicant. The only difference in this case, compared to the prior case, is that Applicant's mark includes the descriptive and non-distinctive term SPORT which term, as Opposer itself acknowledges, identifies the very nature of Applicant's goods and services and which term, as Opposer also acknowledges, identifies the very nature of Opposer's goods and services. For these reasons, the changes in Applicant's second mark are insignificant. Therefore, under the rationale of *Miller Brewing Co. v. Coy International Corp.*, 230 USPQ 675 (TTAB

1986), it is submitted that the judgment against Opposer in the prior opposition operates to preclude Opposer from maintaining this Opposition based on the doctrine of *res judicata*.

Respectfully submitted,

Al-Jazeera Satellite Channel



By: _____
Gary D. Krugman
Kevin G. Smith
SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-3202
Phone: (202) 293-7060
Attorneys for Applicant

Date: November 19, 2014

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **APPLICANT'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** has been mailed this 19th day of November 2014, by first-class mail, postage prepaid to:

Connie L. Ellerbach, Esq.
Fenwick & West LLP.
Silicon Valley Center
801 California Street
Mountain View, CA 94041-1990



Valerie L. Mullineaux