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Filing date: **10/03/2014**

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 WASHINGTON, DC 20037-3202 UNITED STATES tm@sughrue.com, vmullineaux@sughrue.com, mwihte@sughrue.com, gkrugnan@sughrue.com
Submission	Motion for Summary Judgment
Filer's Name	Gary D. Krugman
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Signature	/Gary D. Krugman/
Date	10/03/2014
Attachments	H00191MotionforSummaryJudgmentasfiled1032014.pdf(5873314 bytes)

**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

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

APPLICANT'S MOTION FOR SUMMARY JUDGMENT

Applicant, by its attorneys, hereby moves for summary judgment, pursuant to Rule 56, Fed.R.Civ. Proc. And Trademark Rule 2.127. It is Applicant's position, as more fully discussed below, that there are no genuine issues of material fact in dispute and that Applicant is entitled to judgment as a matter of law in view of the prior judgment entered against Opposer in Opposition No. 91212091.

This motion is supported by self-authenticating evidentiary exhibits, namely, official U.S. Patent and Trademark Office records.

I. BACKGROUND

A. Opposition No. 91212091 Against Applicant's BEIN Application

Applicant, on May 31, 2012, filed an application to register BEIN for the following goods and services:

International Class 9

electronic recorders for the transmission and replay of sound and images; documentary and docu-dramas cinematic films; pre-recorded video tapes, visual discs, and magnetic tapes with sound and images featuring news and commentary; sound recordings

featuring news and commentary; fax machines, information transmission teletypewriters machines, telephones, and computers; computer peripherals for transmission of information and data; electronic computer printers for non-photographic graphical information; blank magnetic discs; blank video tapes; blank magnetic tapes for audio and video signals; video display units; computer keyboards; computer software used to display graphical information; computer memories; computer interface peripherals; digital signal transformers to convert sound to digital data and vice versa; and visual digital transmitters.

International Class 16

printed matter, namely, books, magazines and newsletters in the field of current news events; photographs; printed reports featuring financial, economic, cultural and political information and data; printed instructional, educational, and teaching materials in the field of media, multimedia and related fields

International Class 35

advertising and publicity services to be broadcast over televisions; television advertising services for others; and commercial advertising services for others

International Class 38

television and video broadcasting services; and news agencies, namely, transmission of news items to news reporting organizations

International Class 41

entertainment services, namely, production of television programs, especially news, documentaries, sport and cultural programs and financial, economic and political reports; production of cinematic films; and news agencies, namely, gathering and dissemination of news.

The BEIN application described above was assigned Serial No. 85639445 and was published for opposition on February 19, 2013. A copy of Application Serial No. 85639445, taken from the TSDR database of the Patent and Trademark Office is attached hereto as Exhibit 1.

Opposer, on August 19, 2013, filed a Notice of Opposition against the BEIN mark, Serial No. 85639445, which was assigned Opposition No. 91212091. The opposition asserted prior rights in Opposer's Application Serial No. 85413573 for the mark BE SPORT for the goods and services covered in the BE SPORT application, as follows:

International Class 25

a full line of sportswear and sports related clothing and activewear, namely, yoga pants, athletic uniforms, shorts, pants, hats, jackets, shirts, warm-up suits, sweatsuits, swimwear, tennis wear, skirts, sweaters, underwear, headwear, hats, caps, baseball caps, beanies, gloves, socks, wristbands, athletic shoes, jerseys, shirts with short sleeves, vests, sports bras, sport stockings and leg warmers; accessories, namely, headbands

International Class 35

coordination of recreational sporting opportunities for individuals who wish to participate in team league sports; promoting the interests of people involved and concerned with sports

International Class 41

organization of sports competitions; providing a web site featuring information on amateur and recreational sports; providing news and information in the field of amateur and recreational sports

International Class 42

creating an on-line community for recreational athletes for the purpose of connecting players, teams and leagues, organizing game and sports activities, tracking and recording player performance and results in the field of sports, and creating an online sport identity; providing a web site featuring technology that enables users to share, bookmark, index, store, collect, showcase, and manage content, images, calendars, projects, equipment and information in electronic form in the nature and field of amateur and recreational sports; computer services, namely, hosting on-line interactive public calendars that allow multiple participants to share event schedules and facility reservations

International Class 45

on-line social networking services; online social networking services provided through a sports community website; online social networking services in the field of sports

and further asserted that the use of Applicant's BEIN mark for the goods/services covered in Serial No. 85639445 would likely cause confusion in view of Opposer's BE SPORT mark for the goods/services covered in Serial No. 85413573.

A copy of Opposer's BE SPORT Application Serial No. 85413573, taken from the TSDR database of the Patent and Trademark Office is attached hereto as Exhibit 2.

A copy of the Notice of Opposition in Opposition No. 91212091, taken from the Trademark Trial and Appeal Board database, is attached hereto as Exhibit 3.

On August 19, 2013, the Board instituted Opposition No. 91212091 and set trial dates.

On September 26, 2013, Applicant filed an Answer to the opposition, denying the allegations relating to likelihood of confusion.

Under the Board's trial schedule in Opposition No. 91212091, Opposer's testimony period was set to close July 25, 2014.

Opposer took no testimony and offered no evidence in support of its position. Following the close of Opposer's testimony period, Applicant filed, on July 31, 2014, a Motion for Involuntary Dismissal pursuant to Trademark Rule 2.132. A copy of Applicant's Motion for Involuntary Dismissal is attached as Exhibit 4.

Opposer did not oppose Applicant's motion for involuntary dismissal and, on September 2, 2014, the Board granted Applicant's motion, entered judgment against Opposer and in favor of Applicant and the opposition was dismissed with prejudice. A copy of the September 2, 2014 judgment against Opposer in Opposition No. 91212091 is attached hereto as Exhibit 5.

B. The current Opposition No. 91213743 Against Applicant's BEIN SPORT Application

Applicant, on May 31, 2012, filed an application to register BEIN SPORT for the same goods and services as applied for in the BEIN Application Serial No. 85639445 and set forth, *supra*. The application was assigned Serial No. 85639289. A copy of the application, taken from the TSDR database of the Patent and Trademark Office is attached hereto as Exhibit 6.

During the examination of Applicant's BEIN SPORT application, the Patent and Trademark Office Examiner, in an Office Action issued September 21, 2012, found that the term SPORT was a descriptive and non-distinctive term as applied to Applicant's goods and services in the field of sports, and required that such non-distinctive term be disclaimed.

Applicant thereafter disclaimed the word SPORT apart from the mark as shown.

A copy of the Patent and Trademark Office Official Action requiring the disclaimer of SPORT is hereto attached as Exhibit 7. A copy of Applicant's response, complying with the disclaimer requirement, is attached hereto as Exhibit 8.

Applicant's BEIN SPORT mark was published for opposition on July 30, 2013 and Opposer filed this opposition on November 27, 2013.

The grounds asserted in this opposition are identical to the grounds asserted in the earlier opposition, namely, likelihood of confusion in view of Opposer's prior rights in the mark BE SPORT for the goods/services identified in the BE SPORT Application Serial No. 85413573.

C. Opposer's BE SPORT Application Serial No. 85413573

During the examination of Opposer's BE SPORT Application Serial No. 85413573, the Patent and Trademark Office Examiner issued an Office Action on December 26, 2011. The Office Action required, *inter alia*, a disclaimer of SPORT for the reason that this term was descriptive and non-distinctive as applied to the goods and services in the application, which

goods and services are in the field of sports. A copy of the December 26, 2011 Office Action is attached hereto as Exhibit 9.

On May 31, 2012, Opposer complied with the disclaimer requirement and disclaimed the descriptive and non-distinctive term SPORT apart from the mark as shown. A copy of Opposer's response, complying with the disclaimer requirement, is attached hereto as Exhibit 10.

II. ARGUMENT

A. Standard for Summary Judgment

Summary judgment is appropriate where there are no genuine disputes as to any material facts, and the case may be resolved as a matter of law. Rule 56(a), Fed. R. Civ. Pro. Applicant, as the party seeking summary judgment, recognizes that it has the burden of demonstrating the absence of any genuine disputes of material fact, and that it is entitled to judgment in this case as a matter of law. See: Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Sweater Fashions, Inc. v. Pannill Kitting Co., Inc., 833 F.2d 1560, 4 U.S.P.Q.2d 1793 (Fed. Cir. 1987).

B. The Prior Judgment Against Opposer In Opposition No. 91212091 Precludes Opposer From Maintaining This Opposition

As discussed above, Opposer opposed Applicant's application to register BEIN for various goods and services in Classes 9, 16, 35, 38 and 41 based on Opposer's asserted prior rights/likelihood of confusion in view of Opposer's BE SPORT (SPORT disclaimed) Application Serial No. 85413573 for the goods and services in Classes 25, 35, 41, 42 and 45 set forth in Opposer's Application Serial No. 85413573.

While Opposer had a full and fair opportunity to present its case in support of the allegations in Opposition No. 91212091, Opposer failed to present any evidence whatsoever in support of those allegations and, consequently, judgment was entered against Opposer and in favor of Applicant, with the opposition being dismissed with prejudice.

Opposer has now instituted this second Opposition No. 91213743 against Applicant's second application to register BEIN SPORT (SPORT disclaimed) for the goods and services in Classes 9, 16, 35, 38 and 41 identical to those set forth in the earlier BEIN application. Opposer's grounds for this second opposition are identical to the grounds set forth in the first opposition in connection with which judgment has already been entered against Opposer, namely, prior rights/likelihood of confusion in view of Opposer's BE SPORT Application Serial No. 85413573 for the goods and services in Classes 25, 35, 41, 42 and 45 set forth in Serial No. 85413573.

The only difference between Applicant's marks involved in these two oppositions is that the mark in the instant opposition includes the descriptive and non-distinctive component SPORT. As used in connection with Applicant's goods and services relating to the field of sports, the term has no trademark significance whatsoever and must be free for all to use to describe goods and services related to the field of sports. As such, the Patent and Trademark Office Examiner required that Applicant disclaim this non-distinctive term apart from the mark as a whole, which requirement was complied with by Applicant.

Similarly, the term SPORT, as used in connection with Opposer's BE SPORT mark, is also descriptive and non-distinctive and when applied to the goods and services in Opposer's application which relate to the field of sports. The Patent and Trademark Office Examiner required that Opposer disclaim this merely descriptive, non-distinctive term apart from the mark as a whole, which requirement was complied with by Opposer.

It is submitted that Applicant's application to register BEIN SPORT is an application to register a mark which creates substantially the same commercial impression as Applicant's BEIN mark and that the addition of the disclaimed, descriptive and non-distinctive term SPORT does not rise to the level of a new and different mark sufficient, under the circumstances, to allow

Opposer to prevent registration of the BEIN SPORT mark given the fact that judgment has already been entered against Opposer with respect to Applicant's BEIN mark. See: Miller Brewing Co. v. Coy International Corp., 230 U.S.P.Q. 675 (T.T.A.B. 1986) and cases cited therein. That case held that a judgment in the first opposition, as a result of an abandonment of an application without the consent of Opposer, operates as a claim preclusion, under the doctrine of *res judicata*, in a subsequent opposition so as to bar applicant's subsequent application for an insignificantly modified mark.¹ In the Miller Brewing case, *supra*, the Board discussed Section 24 of the Restatement (second) of Judgments that where a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger and bar, the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.

The Board found, in Miller Brewing, that the two marks sought to be registered constituted a transaction or a series of transactions within the meaning of the Reinstatement and that the judgment in the first opposition operated as claim preclusion so as to bar applicant's second application.

In the present case, the changes in Applicant's second mark are insignificant, with the only difference in the two marks being the inclusion of the descriptive, non-distinctive and disclaimed word SPORT in the second application. Under the rationale of Miller Brewing, *supra*, the judgment against Opposer in the first opposition operates as *res judicata* and precludes the Opposer from maintaining the second opposition.

¹ The Board noted that the "new" mark comprised a modified design and also added descriptive terminology ("CASK NO. 32") which had been disclaimed apart from the mark as a whole.

Moreover, the changes in the two marks are so insignificant that Opposer should be barred from maintaining this opposition by virtue of the prior judgment regardless of whether it is technically barred under *res judicata*. Miller Brewing, *supra*.

III. CONCLUSION

Opposer had a full and fair opportunity to litigate the issues presented in the prior opposition against Applicant's BEIN mark based on Opposer's asserted prior rights in the asserted confusingly similar mark BE SPORT. Judgment, however, was entered against Opposer and in favor of Applicant in that case. Opposer, for the reasons stated above, should now be barred from maintaining a second opposition against Applicant's BEIN SPORT mark with the only difference in the two opposed marks being the inclusion of the admittedly descriptive, non-distinctive and disclaimed term SPORT in Applicant's second mark. Based on the undisputed facts in this case, Opposer is precluded, under the doctrine of *res judicata*, from reinstating the same claims as were decided in Applicant's favor in the prior proceeding and Applicant, therefore, is entitled to judgment herein as a matter of law. Accordingly, Applicant's motion for summary judgment should be granted and this opposition should be dismissed with prejudice. Such action is respectfully requested.

Respectfully submitted,

Al-Jazeera Satellite Channel



By: Gary D. Krugman
Kevin G. Smith
Shahzad Poormosleh
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Phone: (202) 293-7060
Attorneys for Applicant

Date: October 3, 2014

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **APPLICANT'S MOTION FOR SUMMARY JUDGMENT** has been mailed this 3rd day of October 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

Attorney for Opposer

A handwritten signature in black ink, appearing to read "Valerie L. Mullineaux", written over a horizontal line.

Valerie L. Mullineaux

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Mark: BEIN

BEIN

US Serial Number: 85639445

Application Filing Date: May 31, 2012

Register: Principal

Mark Type: Trademark, Service Mark

Status: The Trademark Trial and Appeal Board has terminated an opposition proceeding. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Sep. 02, 2014

Publication Date: Feb. 19, 2013

Mark Information

Mark Literal Elements: BEIN

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Foreign Information

Priority Claimed: Yes

Foreign Application Number: 72863

Foreign Application Filing Date: Feb. 07, 2012

Foreign Registration Number: 72863

Foreign Registration Date: Oct. 08, 2012

Foreign Application/Registration Country: QATAR

Foreign Expiration Date: Feb. 07, 2022

Priority Claimed: Yes

Foreign Application Number: 72864

Foreign Application Filing Date: Feb. 07, 2012

Foreign Registration Number: 72864

Foreign Registration Date: Oct. 08, 2012

Foreign Application/Registration Country: QATAR

Foreign Expiration Date: Feb. 07, 2022

Priority Claimed: Yes

Foreign Application Number: 72865

Foreign Application Filing Date: Feb. 07, 2012

Foreign Registration Number: 72865

Foreign Registration Date: Oct. 08, 2012

Foreign Application/Registration Country: QATAR

Foreign Expiration Date: Feb. 07, 2022

Priority Claimed: Yes

Foreign Application Number: 72866

Foreign Application Filing Date: Feb. 07, 2012

Foreign Registration Number: 72866

Foreign Registration Date: Oct. 08, 2012

Foreign Application/Registration Country: QATAR

Foreign Expiration Date: Feb. 07, 2022

Priority Claimed: Yes

Foreign Application Number: 72867

Foreign Application Filing Date: Feb. 07, 2012

Foreign Registration Number: 72867

Foreign Registration Date: Oct. 08, 2012

Foreign Application/Registration Country: QATAR

Foreign Expiration Date: Feb. 07, 2022

EXHIBIT 1

Country:

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: electronic recorders for the transmission and replay of sound and images; documentary and docu-dramas cinematic films; pre-recorded video tapes, visual discs, and magnetic tapes with sound and images featuring news and commentary; sound recordings featuring news and commentary; fax machines, information transmission teletypewriters machines, telephones, and computers; computer peripherals for transmission of information and data; electronic computer printers for non-photographic graphical information; blank magnetic discs; blank video tapes; blank magnetic tapes for audio and video signals; video display units; computer keyboards; computer software used to display graphical information; computer memories; computer interface peripherals; digital signal transformers to convert sound to digital data and vice versa; and visual digital transmitters

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 44(e)

For: printed matter, namely, books, magazines and newsletters in the field of current news events; photographs; printed reports featuring financial, economic, cultural and political information and data; printed instructional, educational, and teaching materials in the field of media, multimedia and related fields

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 44(e)

For: advertising and publicity services to be broadcast over televisions; television advertising services for others; and commercial advertising services for others

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 44(e)

For: television and video broadcasting services; and news agencies, namely, transmission of news items to news reporting organizations

International Class(es): 038 - Primary Class

U.S Class(es): 100, 101, 104

Class Status: ACTIVE

Basis: 44(e)

For: entertainment services, namely, production of television programs, especially news, documentaries, sport and cultural programs and financial, economic and political reports; production of cinematic films; and news agencies, namely, gathering and dissemination of news

International Class(es): 041 - Primary Class

U.S Class(es): 100, 101, 107

Class Status: ACTIVE

Basis: 44(e)

Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: Yes	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: Yes	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Al-Jazeera Satellite Channel

Owner Address: P.O. Box: 23123
Doha
QATAR

Legal Entity Type: a private institution of public benefit

State or Country Where Organized: QATAR

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Kevin G. Smith

Docket Number: S16069

Attorney Primary Email tm@sughrue.com
Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent Name/Address: KEVIN G SMITH
SUGHRUE MION PLLC
2100 PENNSYLVANIA AVE NW
WASHINGTON, DISTRICT OF COLUMBIA 20037 3202
UNITED STATES

Phone: 202-293-7060

Fax: 202-293-7860

Correspondent e-mail: tm@sughrue.com

**Correspondent e-mail Yes
Authorized:**

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 02, 2014	TTAB RELEASE CASE TO TRADEMARKS	212091
Sep. 02, 2014	OPPOSITION TERMINATED NO. 999999	212091
Sep. 02, 2014	OPPOSITION DISMISSED NO. 999999	212091
Apr. 10, 2014	ASSIGNED TO EXAMINER	90290
Aug. 19, 2013	OPPOSITION INSTITUTED NO. 999999	212091
Mar. 19, 2013	EXTENSION OF TIME TO OPPOSE RECEIVED	
Feb. 19, 2013	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Feb. 19, 2013	PUBLISHED FOR OPPOSITION	
Jan. 30, 2013	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jan. 11, 2013	LAW OFFICE PUBLICATION REVIEW COMPLETED	77312
Jan. 11, 2013	ASSIGNED TO LIE	77312
Jan. 08, 2013	APPROVED FOR PUB - PRINCIPAL REGISTER	
Nov. 29, 2012	TEAS/EMAIL CORRESPONDENCE ENTERED	70997
Nov. 29, 2012	CORRESPONDENCE RECEIVED IN LAW OFFICE	70997
Nov. 28, 2012	ASSIGNED TO LIE	70997
Nov. 20, 2012	TEAS RESPONSE TO SUSPENSION INQUIRY RECEIVED	
Sep. 21, 2012	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Sep. 21, 2012	LETTER OF SUSPENSION E-MAILED	6332
Sep. 21, 2012	SUSPENSION LETTER WRITTEN	78445
Sep. 18, 2012	ASSIGNED TO EXAMINER	78445
Jun. 09, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jun. 04, 2012	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: CANTOR, JILLIAN REDDIN

Law Office Assigned: LAW OFFICE 117

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jan. 11, 2013

Proceedings

Summary

Number of Proceedings: 2

Type of Proceeding: Opposition

Proceeding Number: [91212091](#)

Filing Date: Aug 19, 2013

Status: Terminated

Status Date: Sep 02, 2014

Interlocutory Attorney: BENJAMIN U OKEKE

Defendant

Name: Al-Jazeera Satellite Channel

Correspondent Address: KEVIN G SMITH

SUGHRUE MION PLLC
2100 PENNSYLVANIA AVE NW
WASHINGTON DC , 20037 3202
UNITED STATES

Correspondent e-mail: tm@sughrue.com , vmullineaux@sughrue.com , gkrugman@sughrue.com , ksmith@sughrue.com , mwhite@sughrue.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
BEIN	Opposition Terminated - See TTAB Records	<u>85639445</u>	

Plaintiff(s)

Name: Be Sport, Inc.

Correspondent Address: CONNIE L ELLERBACH
FENWICK & WEST LLP
801 CALIFORNIA STREET
MOUNTAIN VIEW CA , 94041 1990
UNITED STATES

Correspondent e-mail: trademarks@fenwick.com , CEllerbach@fenwick.com , probert@besport.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
BE SPORT	Fourth Extension - Granted	<u>85413573</u>	

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Aug 19, 2013	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Aug 19, 2013	Sep 28, 2013
3	PENDING, INSTITUTED	Aug 19, 2013	
4	ANSWER	Sep 26, 2013	
5	D'S MOTION FOR INVOLUNTARY DISMISSAL	Jul 31, 2014	
6	BD DECISION: DISMISSED W/ PREJ	Sep 02, 2014	
7	TERMINATED	Sep 02, 2014	

Type of Proceeding: Extension of Time

Proceeding Number: 85639445

Filing Date: Jun 19, 2013

Status: Terminated

Status Date: Aug 19, 2013

Interlocutory Attorney:

Defendant

Name: Al-Jazeera Satellite Channel

Correspondent Address: KEVIN G SMITH
SUGHRUE MION PLLC
2100 PENNSYLVANIA AVE NW
WASHINGTON DC , 20037-3202
UNITED STATES

Correspondent e-mail: tm@sughrue.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
BEIN	Opposition Terminated - See TTAB Records	<u>85639445</u>	

Potential Opposer(s)

Name: Be Sport, Inc.

Correspondent Address: CONNIE L ELLERBACH
FENWICK & WEST LLP
801 CALIFORNIA STREET
MOUNTAIN VIEW CA , 94041-1990
UNITED STATES

Correspondent e-mail: trademarks@fenwick.com , CEllerbach@fenwick.com , probert@besport.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
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Prosecution History

Entry Number	History Text	Date	Due Date
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1	INCOMING - EXT TIME TO OPPOSE FILED	Mar 19, 2013
2	EXTENSION OF TIME GRANTED	Mar 19, 2013
3	INCOMING - EXT TIME TO OPPOSE FILED	Jun 19, 2013
4	EXT GRANTED	Jun 20, 2013

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Mark: BE SPORT

BE SPORT

US Serial Number: 85413573

Application Filing Date: Sep. 01, 2011

Register: Principal

Mark Type: Trademark, Service Mark

Status: A fourth request for extension of time to file a Statement of Use has been granted.

Status Date: Sep. 04, 2014

Publication Date: Jul. 24, 2012

Notice of Allowance Date: Sep. 18, 2012

Mark Information

Mark Literal Elements: BE SPORT

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Disclaimer: "SPORT"

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: A full line of sportswear and sports related clothing and activewear, namely, yoga pants, athletic uniforms, shorts, pants, hats, jackets, shirts, warm-up suits, sweatsuits, swimwear, tennis wear, skirts, sweaters, underwear, headwear, hats, caps, baseball caps, beanies, gloves, socks, wristbands, athletic shoes, jerseys, shirts with short sleeves, vests, sports bras, sport stockings and leg warmers; accessories, namely, headbands

International Class(es): 025 - Primary Class

U.S Class(es): 022, 039

Class Status: ACTIVE

Basis: 1(b)

For: Coordination of recreational sporting opportunities for individuals who wish to participate in team league sports; promoting the interests of people involved and concerned with sports

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(b)

For: Organization of sports competitions; providing a web site featuring information on amateur and recreational sports; providing news and information in the field of amateur and recreational sports

International Class(es): 041 - Primary Class

U.S Class(es): 100, 101, 107

Class Status: ACTIVE

Basis: 1(b)

For: Creating an on-line community for recreational athletes for the purpose of connecting players, teams and leagues, organizing game and sports activities, tracking and recording player performance and results in the field of sports, and creating an online sport identity; providing a web site featuring technology that enables users to share, bookmark, index, store, collect showcase, and manage content, images, calendars, projects, equipment and information in electronic form in the nature and field of amateur and recreational sports; computer services, namely, hosting on-line interactive public calendars that allow multiple participants to share event schedules and facility reservations

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(b)

For: On-line social networking services; online social networking services provided through a sports community website; online social networking services in the field of sports

International Class(es): 045 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

EXHIBIT 2

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: Yes	Currently ITU: Yes	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Be Sport, Inc.
 Owner Address: 79 26th Avenue
 San Francisco, CALIFORNIA 94121
 UNITED STATES
 Legal Entity Type: CORPORATION State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record	
Attorney Name: Connie L. Ellerbach	Docket Number: 28767-00070
Attorney Primary Email Address: trademarks@fenwick.com	Attorney Email Authorized: Yes
Correspondent	
Correspondent Name/Address: CONNIE L. ELLERBACH FENWICK & WEST LLP 801 CALIFORNIA ST MOUNTAIN VIEW, CALIFORNIA 94041-1990 UNITED STATES	
Phone: (650) 988-8500	Fax: (650) 938-5200
Correspondent e-mail: trademarks@fenwick.com	Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 05, 2014	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Sep. 04, 2014	EXTENSION 4 GRANTED	76538
Sep. 02, 2014	EXTENSION 4 FILED	76538
Sep. 02, 2014	TEAS EXTENSION RECEIVED	
Mar. 27, 2014	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Mar. 26, 2014	EXTENSION 3 GRANTED	76538
Mar. 14, 2014	EXTENSION 3 FILED	76538
Mar. 14, 2014	TEAS EXTENSION RECEIVED	
Oct. 17, 2013	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Oct. 16, 2013	EXTENSION 2 GRANTED	76538
Sep. 12, 2013	EXTENSION 2 FILED	76538
Oct. 11, 2013	CASE ASSIGNED TO INTENT TO USE PARALEGAL	76538
Sep. 12, 2013	TEAS EXTENSION RECEIVED	
Mar. 02, 2013	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Feb. 28, 2013	EXTENSION 1 GRANTED	98765
Feb. 28, 2013	EXTENSION 1 FILED	98765
Feb. 28, 2013	TEAS EXTENSION RECEIVED	
Sep. 18, 2012	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Jul. 24, 2012	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 24, 2012	PUBLISHED FOR OPPOSITION	

Jul. 04, 2012	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 20, 2012	LAW OFFICE PUBLICATION REVIEW COMPLETED	68171
Jun. 20, 2012	ASSIGNED TO LIE	68171
Jun. 01, 2012	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 01, 2012	EXAMINER'S AMENDMENT ENTERED	88888
Jun. 01, 2012	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Jun. 01, 2012	EXAMINERS AMENDMENT E-MAILED	6328
Jun. 01, 2012	EXAMINERS AMENDMENT -WRITTEN	76079
May 31, 2012	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
May 31, 2012	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
May 31, 2012	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Dec. 26, 2011	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Dec. 26, 2011	NON-FINAL ACTION E-MAILED	6325
Dec. 26, 2011	NON-FINAL ACTION WRITTEN	76079
Dec. 19, 2011	ASSIGNED TO EXAMINER	76079
Sep. 08, 2011	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 05, 2011	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: ENGEL, MICHAEL L

Law Office Assigned: LAW OFFICE 107

File Location

Current Location: INTENT TO USE SECTION

Date in Location: Oct. 11, 2013

Proceedings

Summary

Number of Proceedings: 2

Type of Proceeding: Opposition

Proceeding Number: 91213743

Filing Date: Nov 27, 2013

Status: Pending

Status Date: Nov 27, 2013

Interlocutory Attorney: GEORGE POLOGEORGIS

Defendant

Name: Al-Jazeera Satellite Channel

Correspondent Address: KEVIN G. SMITH
SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVE NW
WASHINGTON DC , 20037-3202
UNITED STATES

Correspondent e-mail: tm@sughrue.com , vmullineaux@sughrue.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
BEIN SPORT	Opposition Pending	<u>85639289</u>	
	Plaintiff(s)		

Name: Be Sport, Inc.

Correspondent Address: CONNIE L ELLERBACH
FENWICK & WEST LLP
801 CALIFORNIA STREET
MOUNTAIN VIEW CA , 94041-1990
UNITED STATES

Correspondent e-mail: trademarks@fenwick.com, cellerbach@fenwick.com, mjansen@fenwick.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
BE SPORT	Fourth Extension - Granted	<u>85413573</u>	
	Prosecution History		

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Nov 27, 2013	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Nov 27, 2013	Jan 06, 2014
3	PENDING, INSTITUTED	Nov 27, 2013	
4	ANSWER	Dec 24, 2013	

Type of Proceeding: Opposition

Proceeding Number: 91212091 Filing Date: Aug 19, 2013
Status: Terminated Status Date: Sep 02, 2014

Interlocutory Attorney: BENJAMIN U OKEKE

Defendant

Name: Al-Jazeera Satellite Channel

Correspondent Address: KEVIN G SMITH
SUGHRUE MION PLLC
2100 PENNSYLVANIA AVE NW
WASHINGTON DC , 20037 3202
UNITED STATES

Correspondent e-mail: km@sughrue.com , vmullineaux@sughrue.com , gkrugman@sughrue.com , ksmith@sughrue.com , mwhite@sughrue.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
BEIN	Opposition Terminated - See TTAB Records Plaintiff(s)	<u>85639445</u>	

Name: Be Sport, Inc.

Correspondent Address: CONNIE L ELLERBACH
FENWICK & WEST LLP
801 CALIFORNIA STREET
MOUNTAIN VIEW CA , 94041 1990
UNITED STATES

Correspondent e-mail: trademarks@fenwick.com, CEllerbach@fenwick.com, probert@besport.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
BE SPORT	Fourth Extension - Granted	<u>85413573</u>	

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Aug 19, 2013	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Aug 19, 2013	Sep 28, 2013
3	PENDING, INSTITUTED	Aug 19, 2013	
4	ANSWER	Sep 26, 2013	
5	D'S MOTION FOR INVOLUNTARY DISMISSAL	Jul 31, 2014	
6	BD DECISION: DISMISSED W/ PREJ	Sep 02, 2014	
7	TERMINATED	Sep 02, 2014	

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

In the matter of Trademark App. Ser. No. 85/639,445
Filed: May 31, 2012
Published: February 19, 2013
Mark: BEIN

Be Sport, Inc.,)
Opposer,)
)
vs.)
)
Al-Jazeera Satellite Channel,)
Applicant.)

NOTICE OF OPPOSITION

Be Sport, Inc. (“Opposer”), a Delaware corporation having a principal place of business at 79 26th Avenue San Francisco, CA 94121, believes that it will be damaged by registration of the mark BEIN (“Applicant’s Mark”) as shown in Application Serial No. 85/639,445 (the “Application”), filed by Al-Jazeera Satellite Channel (“Applicant”), and hereby opposes the Application, alleging as grounds for the opposition that:

1. As is evidenced by the publication of Applicant’s Mark in the February 19, 2013 issue of the Official Gazette, Applicant seeks to register the mark for:

“electronic recorders for the transmission and replay of sound and images; documentary and docu-dramas cinematic films; pre-recorded video tapes, visual discs, and magnetic tapes with sound and images featuring news and commentary; sound recordings featuring news and commentary; fax machines, information transmission teletypewriters machines, telephones, and computers; computer peripherals for transmission of information and data; electronic computer printers for non-photographic

graphical information; blank magnetic discs; blank video tapes; blank magnetic tapes for audio and video signals; video display units; computer keyboards; computer software used to display graphical information; computer memories; computer interface peripherals; digital signal transformers to convert sound to digital data and vice versa; and visual digital transmitters” in Class 9;

“printed matter, namely, books, magazines and newsletters in the field of current news events; photographs; printed reports featuring financial, economic, cultural and political information and data; printed instructional, educational, and teaching materials in the field of media, multimedia and related fields” in Class 16;

“advertising and publicity services to be broadcast over televisions; television advertising services for others; and commercial advertising services for others” in Class 35;

“television and video broadcasting services; and news agencies, namely, transmission of news items to news reporting organizations” in Class 38; and

“entertainment services, namely, production of television programs, especially news, documentaries, sport and cultural programs and financial, economic and political reports; production of cinematic films; and news agencies, namely, gathering and dissemination of news” in Class 41.

2. The Application was filed on May 31, 2012 under Section 44(d) of the Lanham Act.

3. Opposer is the owner of the pending United States application for BE SPORT as shown in Application Serial No. 85/413,573 for:

“A full line of sportswear and sports related clothing and activewear, namely, yoga pants, athletic uniforms, shorts, pants, hats, jackets, shirts, warm-up suits, sweatsuits, swimwear, tennis wear, skirts, sweaters, underwear, headwear, hats, caps, baseball caps, beanies, gloves, socks, wristbands, athletic shoes, jerseys, shirts with short sleeves, vests, sports bras, sport stockings and leg warmers; accessories, namely, headbands” in Class 25;

“Coordination of recreational sporting opportunities for individuals who wish to participate in team league sports; promoting the interests of people involved and concerned with sports” in Class 35;

“Organization of sports competitions; providing a web site featuring information on amateur and recreational sports; providing news and information in the field of amateur and recreational sports” in Class 41;

“Creating an on-line community for recreational athletes for the purpose of connecting players, teams and leagues, organizing game and sports activities, tracking and recording player performance and results in the field of sports, and creating an online sport identity; providing a web site featuring technology that enables users to share, bookmark, index, store, collect showcase, and manage content, images, calendars, projects, equipment and information in electronic form in the nature and field of amateur and recreational sports; computer services, namely, hosting on-line interactive public calendars that allow multiple participants to share event schedules and facility reservations” in Class 42; and

“On-line social networking services; online social networking services provided through a sports community website; online social networking services in the field of sports” in Class 45.

Attached to this Notice of Opposition is a current printout of information from the electronic database records of the U.S. Patent and Trademark Office showing the current status and title of the aforementioned trademark application.

4. On information and belief, Opposer enjoys an earlier filing date. Applicant’s Mark was filed on May 31, 2012, based on Section 44(d) of the Trademark Act, claiming a February 7, 2012 priority date; Opposer filed its application on September 1, 2011.

5. Opposer’s BE SPORT mark is a designator of Opposer’s goods and services, is a valuable asset of Opposer, and is a principal symbol of its goodwill in the mark. Opposer’s goods and services in the field of sports are related to the goods and services claimed in the Application. In view of the similarity of the respective marks and the related nature of the goods and services of the respective parties, it is alleged that Applicant’s Mark so resembles Opposer’s applied for, and not abandoned BE SPORT mark in the United States as to likely cause confusion or mistake, or to deceive, thereby causing loss, damage, and injury to Opposer and the purchasing public.

WHEREFORE, Opposer prays that this Notice of Opposition be sustained, that Applicant’s Trademark Application Serial No. 85/639,445 be rejected, and that Applicant be denied registration of BEIN as a trademark for the goods and services specified in the Application.

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//

//

Please charge the requisite \$300.00 filing fee for this Notice of Opposition and any additional fees to our Deposit Account No. 50-0261.

Respectfully submitted,

Dated: August 19, 2013

/s/ Connie L. Ellerbach
Connie L. Ellerbach
Attorney for Opposer
FENWICK & WEST LLP
Silicon Valley Center
801 California Street
Mountain View, California 94041
Telephone: (650) 988-8500
Facsimile: (650) 938-5200

PROOF OF SERVICE BY MAIL

I declare that:

I am employed in the County of Santa Clara, California.

I am over the age of eighteen years and not a party to the within cause; my business address is Fenwick & West LLP, Silicon Valley Center, 801 California Street, Mountain View, CA 94041. On August 19, 2013 I served the within NOTICE OF OPPOSITION on the interested parties in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, via U.S. First Class Mail at Mountain View, California, addressed as follows:

Kevin G. Smith
Sughrue Mion, PLLC
2100 Pennsylvania Ave NW
Washington, DC 20037-3202

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Mountain View, California, this 19th day of August, 2013.

/s/ Amy Roodzant
Amy Roodzant

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

Be Sport, Inc.,

Opposer,

vs.

Al-Jazeera Satellite Channel,

Applicant.

Opposition No.: 91212091

**APPLICANT'S MOTION FOR INVOLUNTARY
DISMISSAL PURSUANT TO TRADEMARK RULE 2.132(b)**

Applicant, by its attorney, hereby moves, pursuant to Trademark Rule 2.132(b), for involuntary dismissal of the opposition on the ground that Opposer's testimony period has expired; that Opposer has taken no testimony and has offered no evidence in support of its allegations in the Notice of Opposition, other than a copy of Patent and Trademark Office records and that, upon the law and the facts, Opposer has shown no right to relief.¹

I. Background

On August 19, 2013, Opposer filed an opposition against Applicant's mark "BEIN" for various goods and services in Classes 9, 16, 35, 38 and 41.²

As grounds in support of the opposition, Opposer asserts that it is the owner of the pending application for the mark BE SPORT, Serial No. 85413573, for various goods and services in Classes 25, 35, 41, 42 and 45 (Not. of Opp. ¶3); that Opposer's pleaded application was filed September 1, 2011 which filing date is earlier than the filing date of Applicant's

¹ In the unlikely event this motion is denied and the case is to go forward, Applicant respectfully requests that trial dates be reset, beginning with the due date for Applicants' pre-trial disclosures.

² Application Serial No. 85639445 filed May 31, 2012, claiming a Section 44(d) convention priority filing date of February 7, 2012.

application (Not. of Opp. ¶4) and that Applicant's mark so resembles Opposer's applied for BE SPORT mark as to be likely to cause confusion under Section 2(d) of the Trademark Act.

On September 26, 2013, Applicant filed its Answer to the opposition. Applicant's Answer admitted that Opposer's pleaded Application Serial No. 85413573 had an earlier filing date than Applicant's application but Applicant otherwise denied, based on insufficient knowledge or information, the allegation that Opposer is the owner of the pleaded Application Serial No. 85413573 and further denied the allegation of likelihood of confusion.

Under the Board's Trial Order dated August 19, 2013, the discovery period was set to close April 25, 2014, Opposer's time for serving pre-trial disclosures closed on June 10, 2014 and Opposer's testimony period closed on July 25, 2014.

During the discovery period, Applicant timely served Interrogatories and Requests for Production of Documents on Opposer. Opposer did not answer or otherwise object to any of those discovery requests.³

Subsequently, Opposer's time for serving pre-trial disclosures expired and Opposer's time for taking testimony expired. Opposer has served no pre-trial disclosures and has taken no testimony and offered no other evidence in support of its position.

II. Applicant's Motion Under Trademark Rule 2.132(b) is Well-Taken and Should Be Granted

Trademark Rule 2.132(b) provides for judgment against an Opposer where the Opposer's testimony period has passed and the Opposer has offered no evidence other than copies of Patent and Trademark Office records.

The purpose of such a motion under Rule 2.132(b) is to save the Applicant the expense and delay of continuing with the trial when the Opposer has offered no evidence other than copies of Patent and Trademark Office records and these records do not make out a *prima facie* case. See: TBMP Section 534.03 and cases cited therein.

Applicant's Motion under Rule 2.132(b) is clearly well-taken, under the facts presented herein. The pleaded Application Serial No. 85413573 attached to the Notice of Opposition, while admittedly having a filing date earlier than the filing date of Applicant's opposed application, is not entitled to any of the presumptions enjoyed by a Principal Register registration

³ No Motion to Compel was filed by Applicant.

with respect to the ownership or validity of the mark. Applicant has specifically denied the allegation relating to Opposer's ownership of the pleaded application, leaving Opposer' to its proofs. Opposer has failed to offer any evidence as to its ownership of the pleaded application and, for that reason alone, Opposer has failed to demonstrate its standing to bring this opposition.

Moreover, even if Opposer had demonstrated its ownership of pleaded Application Serial No. 85413573, Applicant submits that the Motion under Rule 2.132(b) should nevertheless still be granted. Applicant's mark is BEIN and covers various electronic recorders, films, video tapes and discs, sound recordings, fax machines, telephones, computers and related products in Class 9; various printed matter and printed reports in the fields of current news, events, finance, economic, culture and politics, and related products in Class 16; various advertising and publicity services to be broadcast over television, television and commercial advertising services for others in Class 35; television and video broadcasting services in Class 38 and production of television programs in Class 41.

Opposer's alleged mark is BE SPORT and the goods/services in Application Serial No. 85413573 cover clothing products in Class 25; coordination of recreational sporting opportunities and promoting the interests of people involved with sports in Class 35; organizing of sports competitions and providing news and information in the field of amateur and recreational sports in Class 41; organizing games and sports activities, providing a website enabling users to share, store and manage content, etc., in the field of amateur and recreational sports, computer services in the nature of hosting online interactive public calendars that allow participants to share event schedules and facility reservations in Class 42 and online social networking services; online social networking services in the field of sports in Class 45.

It is clear that where, as here, the marks are not identical or even substantially similar, and where the relationship between Applicant's goods and services and the goods and services covered in pleaded Application Serial No. 85413573 are not apparent from the face of pleaded Application Serial No. 85413573, there is no need to continue with the time and expense of trial and briefs and that a Rule 2.132(b) motion is properly granted. See: Syntex (U.S.A.) Inc. v. E.R. Squibb & Sons, Inc., 14 U.S.P.Q.2d 1879 (T.T.A.B. 1990).

Under the circumstances, since Opposer has not proved its standing to maintain this opposition and since, in any event, the "evidence" submitted by Opposer in support of its case fails to make out a *prima facie* case, the motion under Trademark Rule. 2.132(b) is well-taken and should be granted.

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
Fax: (202) 331-4308
Attorneys for Applicant

Date: July 31, 2014

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing APPLICANT'S MOTION FOR INVOLUNTARY DISMISSAL PURSUANT TO TRADEMARK RULE 2.132(b) has been mailed this 31st day of July, 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
Attorney for Opposer



Gary D. Krugman

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

BUO/RA

Mailed: September 2, 2014

Opposition No. 91212091

Be Sport, Inc.

v.

Al-Jazeera Satellite Channel

By the Trademark Trial and Appeal Board:

Applicant's motion to for involuntary dismissal in light of opposer's failure to prosecute this case, filed July 31, 2014, is **GRANTED** as conceded, because opposer failed to respond thereto. Trademark Rules 2.127(a) and 2.132(b); TBMP § 534.01.

Accordingly, applicant's motion to dismiss under Trademark Rule 2.132(b) is **GRANTED**. Judgment is entered against opposer and in favor of applicant and the opposition is **DISMISSED with prejudice**.

Generated on: This page was generated by TSDR on 2014-10-01 09:17:41 EDT

Mark: BEIN SPORT

BEIN SPORT

US Serial Number: 85639289

Application Filing Date: May 31, 2012

Register: Principal

Mark Type: Trademark, Service Mark

Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Nov. 27, 2013

Publication Date: Jul. 30, 2013

Mark Information

Mark Literal Elements: BEIN SPORT

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Disclaimer: "SPORT"

Foreign Information

Priority Claimed: Yes

Foreign Application Number: 72858

Foreign Application Filing Date: Feb. 07, 2012

Foreign Registration Number: 72858

Foreign Registration Date: Oct. 08, 2012

Foreign Application/Registration Country: QATAR

Foreign Expiration Date: Feb. 07, 2022

Priority Claimed: Yes

Foreign Application Number: 72859

Foreign Application Filing Date: Feb. 07, 2012

Foreign Registration Number: 72859

Foreign Registration Date: Oct. 08, 2012

Foreign Application/Registration Country: QATAR

Foreign Expiration Date: Feb. 07, 2022

Priority Claimed: Yes

Foreign Application Number: 72860

Foreign Application Filing Date: Feb. 07, 2012

Foreign Registration Number: 72860

Foreign Registration Date: Oct. 08, 2012

Foreign Application/Registration Country: QATAR

Foreign Expiration Date: Feb. 07, 2022

Priority Claimed: Yes

Foreign Application Number: 72861

Foreign Application Filing Date: Feb. 07, 2012

Foreign Registration Number: 72861

Foreign Registration Date: Oct. 08, 2012

Foreign Application/Registration Country: QATAR

Foreign Expiration Date: Feb. 07, 2022

Priority Claimed: Yes

Foreign Application Number: 72862

Foreign Application Filing Date: Feb. 07, 2012

Foreign Registration Number: 72862

Foreign Registration Date: Oct. 08, 2012

Foreign Application/Registration Country: QATAR

Foreign Expiration Date: Feb. 07, 2022

EXHIBIT 6

Application/Registration
Country:

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: electronic recorders for the transmission and replay of sound and images; documentary and docu-dramas cinematic films; pre-recorded video tapes, visual discs, and magnetic tapes with sound and images featuring news and commentary; sound recordings featuring news and commentary; fax machines, information transmission teletypewriters machines, telephones, and computers; computer peripherals for transmission of information and data; electronic computer printers for non-photographic graphical information; blank magnetic discs; blank video tapes; blank magnetic tapes for audio and video signals; video display units; computer keyboards; computer software used to display graphical information; computer memories; computer interface peripherals; digital signal transformers to convert sound to digital data and vice versa; and visual digital transmitters

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 44(e)

For: printed matter, namely, books, magazines and newsletters in the field of current news events; photographs; printed reports featuring financial, economic, cultural and political information and data; printed instructional, educational, and teaching materials in the field of media, multimedia and related fields

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 44(e)

For: advertising and publicity services to be broadcast over televisions; television advertising services for others; and commercial advertising services for others

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 44(e)

For: television and video broadcasting services; and news agencies, namely, transmission of news items to news reporting organizations

International Class(es): 038 - Primary Class

U.S Class(es): 100, 101, 104

Class Status: ACTIVE

Basis: 44(e)

For: entertainment services, namely, production of television programs, especially news, documentaries, sport and cultural programs and financial, economic and political reports; production of cinematic films; and news agencies, namely, gathering and dissemination of news

International Class(es): 041 - Primary Class

U.S Class(es): 100, 101, 107

Class Status: ACTIVE

Basis: 44(e)

Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: Yes	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: Yes	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Al-Jazeera Satellite Channel

Owner Address: P.O. Box: 23123
Doha
QATAR

Legal Entity Type: a private institution of public benefit

State or Country Where Organized: QATAR

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Kevin G. Smith
Attorney Primary Email lm@sughrue.com
Address:

Docket Number: S16068
Attorney Email Yes
Authorized:

Correspondent

Correspondent Name/Address: KEVIN G. SMITH
SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVE NW
WASHINGTON, DISTRICT OF COLUMBIA 20037-3202
UNITED STATES

Phone: 202-293-7060

Fax: 202-293-7860

Correspondent e-mail: lm@sughrue.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Apr. 10, 2014	ASSIGNED TO EXAMINER	90290
Nov. 27, 2013	OPPOSITION INSTITUTED NO. 999999	213743
Aug. 27, 2013	EXTENSION OF TIME TO OPPOSE RECEIVED	
Jul. 30, 2013	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 30, 2013	PUBLISHED FOR OPPOSITION	
Jul. 10, 2013	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 27, 2013	LAW OFFICE PUBLICATION REVIEW COMPLETED	70997
Jun. 25, 2013	ATTORNEY REVIEW COMPLETED	78445
Jun. 25, 2013	TEAS/EMAIL CORRESPONDENCE ENTERED	70997
Jun. 25, 2013	CORRESPONDENCE RECEIVED IN LAW OFFICE	70997
Jun. 24, 2013	TEAS REQUEST FOR RECONSIDERATION RECEIVED	
Jun. 24, 2013	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 24, 2013	TEAS/EMAIL CORRESPONDENCE ENTERED	70997
Jun. 24, 2013	CORRESPONDENCE RECEIVED IN LAW OFFICE	70997
Jun. 20, 2013	TEAS VOLUNTARY AMENDMENT RECEIVED	
Jan. 08, 2013	NOTIFICATION OF FINAL REFUSAL EMAILED	
Jan. 08, 2013	FINAL REFUSAL E-MAILED	
Jan. 08, 2013	FINAL REFUSAL WRITTEN	78445
Nov. 29, 2012	TEAS/EMAIL CORRESPONDENCE ENTERED	70997
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Nov. 28, 2012	ASSIGNED TO LIE	70997
Nov. 20, 2012	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Sep. 21, 2012	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Sep. 21, 2012	NON-FINAL ACTION E-MAILED	6325
Sep. 21, 2012	NON-FINAL ACTION WRITTEN	78445
Sep. 18, 2012	ASSIGNED TO EXAMINER	78445
Jun. 07, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jun. 04, 2012	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: CANTOR, JILLIAN REDDIN

Law Office Assigned: LAW OFFICE 117

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jun. 27, 2013

Proceedings

Summary

Number of Proceedings: 2

Type of Proceeding: Opposition

Proceeding Number: 91213743

Filing Date: Nov 27, 2013

Status: Pending

Status Date: Nov 27, 2013

Interlocutory Attorney: GEORGE POLOGEORGIS

Defendant

Name: Al-Jazeera Satellite Channel

Correspondent Address: KEVIN G. SMITH
SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVE NW
WASHINGTON DC , 20037-3202
UNITED STATES

Correspondent e-mail: tm@sughrue.com , vmullineaux@sughrue.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
BEIN SPORT	Opposition Pending Plaintiff(s)	<u>85639289</u>	

Name: Be Sport, Inc.

Correspondent Address: CONNIE L ELLERBACH
FENWICK & WEST LLP
801 CALIFORNIA STREET
MOUNTAIN VIEW CA , 94041-1990
UNITED STATES

Correspondent e-mail: trademarks@fenwick.com, cellerbach@fenwick.com, mjansen@fenwick.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
BE SPORT	Fourth Extension - Granted	<u>85413573</u>	

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Nov 27, 2013	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Nov 27, 2013	Jan 06, 2014
3	PENDING, INSTITUTED	Nov 27, 2013	
4	ANSWER	Dec 24, 2013	

Type of Proceeding: Extension of Time

Proceeding Number: 85639289

Filing Date: Aug 27, 2013

Status: Terminated

Status Date: Nov 27, 2013

Interlocutory Attorney:

Defendant

Name: Al-Jazeera Satellite Channel

Correspondent Address: KEVIN G. SMITH
SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVE NW
WASHINGTON DC , 20037-3202
UNITED STATES

Associated marks

Mark	Application Status	Serial Number	Registration Number
BEIN SPORT	Opposition Pending Potential Opposer(s)	<u>85639289</u>	

Name: Be Sport, Inc.

Correspondent Address: Connie L. Ellerbach
Fenwick & West LLP
801 California Street
Mountain View CA , 94041-1990
UNITED STATES

Correspondent e-mail: trademarks@fenwick.com, cellerbach@fenwick.com, mjansen@fenwick.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
------	--------------------	---------------	---------------------

Entry Number	History Text	Prosecution History	Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Date	Aug 27, 2013
2	EXTENSION OF TIME GRANTED		Aug 27, 2013

To: Al-Jazeera Satellite Channel (tm@sughrue.com)

Subject: U.S. TRADEMARK APPLICATION NO. 85639289 - BEIN SPORT - S16068

Sent: 9/21/2012 1:17:23 PM

Sent As: ECOM117@USPTO.GOV

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
[Attachment - 8](#)
[Attachment - 9](#)
[Attachment - 10](#)
[Attachment - 11](#)
[Attachment - 12](#)
[Attachment - 13](#)
[Attachment - 14](#)
[Attachment - 15](#)
[Attachment - 16](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85639289

MARK: BEIN SPORT

85639289

CORRESPONDENT ADDRESS:

KEVIN G. SMITH
SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVE NW
WASHINGTON, DC 20037-3202

CLICK HERE TO RESPOND
<http://www.uspto.gov/trademarks/te>

APPLICANT: Al-Jazeera Satellite Channel

CORRESPONDENT'S REFERENCE/DOCKET NO :

S16068

CORRESPONDENT E-MAIL ADDRESS:

tm@sughrue.com

EXHIBIT 7

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 9/21/2012

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SEARCH OF OFFICE'S DATABASE OF MARKS

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

UNSIGNED APPLICATION

The application was not signed and verified, both of which are application requirements. *See* 15 U.S.C. §§1051(b), 1126(d)-(e); 37 C.F.R. §§2.33(a), (b)(2), 2.34(a)(2), (a)(3)(i), (a)(4)(ii). Therefore, applicant must verify the statements specified further below in a signed affidavit or declaration under 37 C.F.R. §2.20. *See* 15 U.S.C. §§1051(b)(3), 1126(d)-(e); 37 C.F.R. §§2.33(a), (b)(2), (c), 2.193(e)(1); TMEP §§804.02, 806.01(b)-(d).

If applicant responds to this Office action online via the Trademark Electronic Application System (TEAS), applicant may satisfy this requirement by answering "yes" to the TEAS response form wizard question relating to submitting a "signed declaration," and following the instructions within the form for signing. *See* 37 C.F.R. §§2.33(a), (b)(2), (c), 2.193(a), (c)-(d), (e)(1); TMEP §§611.01(c), 804.01(b).

If applicant responds to this Office action on paper, via regular mail, applicant may satisfy this requirement by providing the following statements and declaration at the end of the response, personally signed by a person authorized under 37 C.F.R. §2.193(e)(1) and dated, with the printed or typed name of the signatory appearing immediately below the signature. *See* 37 C.F.R. §§2.20, 2.33(a), (b)(2), (c), 2.193(a), (d); TMEP §§611.01(b), 804.01(b).

STATEMENTS: The undersigned is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be entitled to use the mark in commerce; applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods and/or services listed in the application as of the application filing date; the facts set forth in the application are true and accurate; and to the best of the undersigned's knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in

the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive.

DECLARATION: The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

(Signature)

(Print or Type Name and Position)

(Date)

DISCLAIMER REQUIRED

Applicant must disclaim the descriptive wording “SPORT” apart from the mark as shown because it merely describes an ingredient, quality, characteristic, function, feature, purpose or use of applicant’s goods and/or services. *See* 15 U.S.C. §§1052(e)(1), 1056(a); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987); TMEP §§1213, 1213.03(a).

The definition of the term “sport” is “physical activity engaged in for pleasure” and “a particular activity (as an athletic game) so engaged in.” See attachments.

A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of an applicant’s goods and/or services. *E.g.*, *In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 963-64, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007).

The identification indicates that the goods and/or are in the field of sports. For example, applicant has “entertainment services, namely, production of television programs, especially news, documentaries, sport and cultural programs and financial, economic and political reports.” With respect to the remaining goods and services, the term “sport” conveys the field of the goods and services. For example, “printed matter, namely, books, magazines and newsletters in the field of current news events” and “news agencies, namely, transmission of news items to news reporting organizations” is broad enough to include news in the field of sports.

Specifically, the attached evidence from shows this wording describes the applicant’s services because they are in the field of sports. See attachments. Therefore, the wording merely describes a characteristic of the goods and services.

Applicant may submit the following standardized format for a disclaimer:

No claim is made to the exclusive right to use “SPORT” apart from the mark as shown.

TMEP §1213.08(a)(i); *see In re Owatonna Tool Co.*, 231 USPQ 493 (Comm'r Pats. 1983).

A “disclaimer” is a statement that applicant does not claim exclusive rights to an unregistrable component of a mark; it does not affect the appearance of the mark. TMEP §1213. An unregistrable component of a mark includes wording and designs that are merely descriptive or generic of the goods and/or services, and is wording or an illustration that others would need to use to describe or show their goods and services in the marketplace. 15 U.S.C. §1052(e); *see* TMEP §§1209.03(f), 1213.03 *et seq.*

A disclaimer does not physically remove the disclaimed matter from the mark, but rather is a written statement that applicant does not claim exclusive rights to the disclaimed wording and/or design separate and apart from the mark as shown in the drawing. TMEP §§1213, 1213.10.

If applicant does not provide the required disclaimer, the USPTO can refuse to register the entire mark. TMEP §1213.01(b).

FOREIGN REGISTRATION CERTIFICATE REQUIRED

The application specifies Trademark Act Section 44(d) as the sole filing basis and indicates that applicant intends to rely on Section 44(e) as a basis for registration; however no copy of a foreign registration was provided. *See* 15 U.S.C. §1126(d), (e).

An application with a Section 44(e) basis must include a true copy, photocopy, certification, or certified copy of a foreign registration from an applicant’s country of origin. 15 U.S.C. §1126(e); 37 C.F.R. §2.34(a)(3)(ii); TMEP §§1004, 1004.01, 1016. In addition, the applicant’s country of origin must be a party to a convention or treaty relating to trademarks to which the United States is also a party, or must extend reciprocal registration rights to nationals of the United States by law. 15 U.S.C. §1126(b); TMEP §§1002.01, 1004.

Therefore, applicant must provide a copy of the foreign registration from applicant’s country of origin when it becomes available. TMEP §1003.04(a). A copy of a foreign registration must consist of a document issued to an applicant by, or certified by, the intellectual property office in applicant’s country of origin. TMEP §1004.01. If applicant’s country of origin does not issue registrations or Madrid Protocol certificates of extension of protection, the applicant may submit a copy of the Madrid Protocol international registration that shows that protection of the international registration has been extended to applicant’s country of origin. TMEP §1016. In addition, applicant must also provide an English translation if the foreign registration is not written in English. 37 C.F.R. §2.34(a)(3)(ii); TMEP §1004.01(a)-(b). The translation should be signed by the translator. TMEP §1004.01(b).

If the foreign registration is not yet available, applicant should inform the trademark examining attorney that the foreign application is still pending and request that the U.S. application be suspended until a copy of the foreign registration is available. TMEP §§716.02(b), 1003.04(a).

If applicant cannot satisfy the requirements of the Section 44(e) basis, applicant may amend the basis to Section 1(a) or 1(b), if applicant can satisfy the requirements for the new basis. *See* 15 U.S.C. §§1051(a)-(b), 1126(e); TMEP §806.03. Please note that, if the U.S. application satisfied the requirements of Section 44(d) as of the U.S. application filing date, applicant may retain the priority filing date under Section 44(d) without perfecting the Section 44(e) basis, provided there is a continuing valid basis for registration. *See* 37 C.F.R. §2.35(b)(3)-(4); TMEP §§806.02(f), 806.03(h).

/Ramona Ortiga Palmer/
Ramona Ortiga Palmer
Law Office 117
571-272-9715
ramona.ortiga-palmer@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

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- sport
- sport finder
- sport fish

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sport *verb* \ˈspɔrt\

Definition of SPORT

intransitive verb

- a** : to amuse oneself : FROLIC <dams *sporting* in the meadow>

b : to engage in a sport
- a** : to mock or ridicule something

b : to speak or act in jest : TRIFLE
- 1** [²*sport*] : to deviate or vary abruptly from type (as by bud variation) : MUTATE

transitive verb

- 1** : to display or wear usually ostentatiously : BOAST <*sporting* expensive new shoes>

2 [²*sport*] : to put forth as a sport or bud variation

- Ⓜ See [sport](#) defined for English-language learners »
- See [sport](#) defined for kids »

Examples of SPORT

- She showed up at the party *sporting* a bright red hat.
- <from sailing to snorkeling, each day we *sported* at a different activity offered by the beach resort.>

Origin of SPORT

Middle English, to divert, disport, short for *disporten*
First Known Use: 15th century

Related to SPORT

Synonyms: dally, disport, frolic, recreate, rollick, skylark, play, toy

[+] more

Rhymes with SPORT

bort, court, fort, forte, mort, ort, port, Porte, quart, short, skort, snort, sort, swart, thwart, tort, torte, wart, wort

sport *noun*

Definition of SPORT

- 1 a** : a source of diversion : RECREATION
 - b** : sexual play
 - c (1)** : physical activity engaged in for pleasure (2) : a particular activity (as an athletic game) so engaged in
- 2 a** : PLEASANTRY, JEST
 - b** : often mean-spirited jesting : MOCKERY, DERISION
- 3 a** : something tossed or driven about in or as if in play
 - b** : LAUGHINGSTOCK
- 4 a** : SPORTSMAN
 - b** : a person considered with respect to living up to the ideals of sportsmanship <a good *sport*> <a poor *sport*>
 - c** : a companionable person
- 5** : an individual exhibiting a sudden deviation from type beyond the normal limits of individual variation usually as a result of

mutation especially of somatic tissue

☞ See sport defined for English-language learners »

Examples of SPORT

- She likes to *play sport*.
- Ice-skating with friends is my favorite *sport*.

First Known Use of SPORT

15th century

Related to SPORT

Synonyms: dalliance, frolic, frolicking, fun, fun and games, recreation, relaxation, rollicking, play

Antonyms: earnest

[+] more

See Synonym Discussion at **fun**

Other General Sports Terms

kegler, mulligan, rappel, turkey

sport *adjective*

Definition of SPORT

: of, relating to, or suitable for sports; *especially* : styled in a manner suitable for casual or informal wear <*sport* coats>

☞ See sport defined for English-language learners »

Variants of SPORT

sport or sports

First Known Use of SPORT

1582

Other General Sports Terms

kegler, mulligan, rappel, turkey

sport  *noun* \spɔ(ɹ)t, spɔ(ə)r/ (Medical Dictionary)

Medical Definition of SPORT

: an individual exhibiting a sudden deviation from type beyond the normal limits of individual variation usually as a result of mutation especially of somatic tissue

Learn More About SPORT

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- Spanish-English Dictionary: [Translation of "sport"](#)
- Britannica.com: Encyclopedia article about "sport"

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- Previous Word in the Dictionary: sporran
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the matter of

Al-Jazeera Satellite Channel

U.S. Serial No.: 85/639,289

Filed: May 31, 2012

Mark: BEIN SPORT

Trademark Examining Attorney

Ramona Ortiga Palmer

Law Office 117

NO FEE

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

Applicant's counsel is in receipt of the Office Action issued September 21, 2012. After careful consideration of its contents and correspondence with applicant, counsel responds as follows.

AMENDMENT

Submitted herewith are applicant's home country registrations issuing as a result of the foreign applications upon which priority is claimed, namely:

Qatar Registration No. 72858 (Cl. 9) issued October 8, 2012.

Qatar Registration No. 72859 (Cl. 16) issued October 8, 2012.

Qatar Registration No. 72860 (Cl. 35) issued October 8, 2012.

Qatar Registration No. 72861 (Cl. 38) issued October 8, 2012.

Qatar Registration No. 72862 (Cl. 41) issued October 8, 2012.

The registrations are valid for a period of ten (10) years from the filing date of the Qatar applications (February 7, 2012).

Please add the following statement to the application:

No claim is made to the exclusive right to use the term "SPORT" apart from the mark as shown.

REMARKS

Applicant submits its home country registrations with English translation signed by the translator.

Pursuant to the Examining Attorney's request, applicant has inserted a disclaimer of the term "SPORT" apart from the mark as shown.

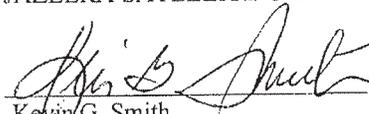
In view of the foregoing, applicant requests that the Examining Attorney allow the U.S. application to proceed to publication under the provisions of Section 44(e). Prompt action in that regard is earnestly solicited.

If further information is required, the Examining Attorney is encouraged to contact the undersigned by telephone to facilitate an early publication.

Respectfully submitted,

AL-JAZEERA SATELLITE CHANNEL

By:



Kevin G. Smith
SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037
Telephone: (202) 293-7060

Dated: November 20, 2012.

To: Be Sport, Inc. (trademarks@fenwick.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85413573 - BE SPORT - 28767-00070
Sent: 12/26/2011 9:36:40 AM
Sent As: ECOM107@USPTO.GOV
Attachments:

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85413573

MARK: BE SPORT

85413573

CORRESPONDENT ADDRESS:

CONNIE L. ELLERBACH
FENWICK & WEST LLP
801 CALIFORNIA ST
MOUNTAIN VIEW, CA 94041-1990

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Be Sport, Inc.

CORRESPONDENT'S REFERENCE/DOCKET

NO:

28767-00070

CORRESPONDENT E-MAIL ADDRESS:

trademarks@fenwick.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 12/26/2011

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Identification of Goods in Class 25 – Indefinite

The wording “**sportswear and sports related clothing and accessories; activewear**” in the

EXHIBIT 9

identification of goods must be clarified because it is too broad and could include goods in other international classes. *See* TMEP §§1402.01, 1402.03. Applicant must amend the identification to specify the common commercial name of the goods. If there is no common commercial name, applicant must describe the product and its intended uses. *See id.*

In the identification of goods, applicant must use the common commercial or generic names for the goods, be as complete and specific as possible, and avoid the use of indefinite words and phrases. If applicant uses indefinite words such as “accessories,” it must be followed by “namely,” followed by a list of the specific goods identified by their common commercial or generic names. *See* TMEP §§1402.01, 1402.03(a).

Examples of acceptable identifications of goods are “yoga pants, athletic uniforms”. For assistance with identifying and classifying goods in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netathtml/tidm.html>. *See* TMEP §1402.04.

An applicant may amend an identification of goods and services only to clarify or limit the goods and services; adding to or broadening the scope of the goods and/or services is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07 *et seq.*

Full Line of Goods – Advisory

Applicant has identified its goods as a “full line” of products. Please be advised that upon filing an amendment to allege use or statement of use, applicant must provide evidence to substantiate use of the mark for a full line of products. Such evidence may comprise product catalogs or similar evidence showing broad use of the mark for a majority of the goods in the “full line.” TMEP §1402.03(c); *see* 37 C.F.R. §2.61(b).

If applicant is unable to provide such evidence, then applicant will be required to amend the identification to delete “full line of” and specify the common commercial or generic name for each item. *See* TMEP §§1402.01, 1402.03(c).

Evidence showing use of the mark on only three products is not considered sufficient to show use for a “full line” of products. An applicant who does not use the mark on a sufficient number or variety of goods in its line should not be able to procure a registration which potentially may bar the registration of another applicant who uses a similar mark on different products that could conceivably be considered part of the “full line” of products. *See In re Astra Merck Inc.*, 50 USPQ2d 1216 (TTAB 1999).

Disclaimer

Applicant must disclaim the descriptive wording “SPORT” apart from the mark as shown because it merely describes the field of applicant’s goods and services. *See* 15 U.S.C. §§1052(e)(1), 1056(a); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987); TMEP §§1213, 1213.03(a). Applicant’s services are in the field of sports, and applicant’s goods are sportswear and sports related clothing and accessories.

Applicant may submit the following standardized format for a disclaimer:

No claim is made to the exclusive right to use “SPORT” apart from the mark as shown.

TMEP §1213.08(a)(i); *see In re Owatonna Tool Co.*, 231 USPQ 493 (Comm’r Pats. 1983).

No Conflicting Marks Noted

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

/Michael Engel/
Trademark Examining Attorney
Law Office 107
(571) 272-9338
Michael.Engel@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

**IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Be Sport, Inc.

Serial No. 85413573

Mark: BE SPORT

Classes: 25, 35, 41, 42 and 45

Law Office: 107

Filed: September 1, 2011

Examining Attorney: Michael Engel

In response to the Office Action, please amend the application as follows:

Class 25: A full line of sportswear, sports related clothing and activewear, namely, yoga pants, athletic uniforms, shorts, pants, hats, jackets, shirts, warm-up suits, sweatsuits, swimwear, tennis wear, skirts, sweaters, underwear, headwear, hats, caps, baseball caps, beanies, gloves, socks, wristbands, athletic shoes, jerseys, shirts with short sleeves, vests, sports bras, sport stockings and leg warmers; accessories, namely, bags, towels, headbands, wristbands and helmets".

Please also add the following disclaimer to the application:

--No claim is made to the exclusive right to use "SPORT" apart from the mark as shown.--

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RESPONSE TO OFFICE ACTION

This Amendment and Response is timely filed in response to the Office Action dated December 26, 2011. In that action, the Examining Attorney: (1) requested that Applicant amend and clarify the identification of its goods, per TMEP §§ 1402.01 and 1402.03; and (2) required that Applicant disclaim the term "SPORT" apart from the mark, TMEP §§1213, 1213.03(a).

1. Identification of Goods and Services

The Examining Attorney has indicated that some of Applicant's goods need to be further clarified because the identification of goods is too broad. Applicant thanks the Examining Attorney for his proposed amendments and has amended the description in the application to further clarify the nature of Applicant's goods.

2. Applicant's Ownership of Prior U.S. Registration No. 3901492

In response to the Examining Attorney's requirement, Applicant has added the requested disclaimer.

3. Conclusion

Applicant submits that it has responded to all of the outstanding issues, and requests that the Examining Attorney approve the application for publication.

Respectfully submitted,

Date: May 31, 2012

By:

/MJansen/
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