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

Proceeding	91217033
Party	Plaintiff Kiko S.p.A.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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KIKO S.p.A.,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91217033
	:	
DOOYEON CORP.,	:	
	:	
Applicant.	:	
_____	x	

**TRIAL BRIEF FOR OPPOSER
KIKO S.p.A.**

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I. INTRODUCTION

Opposer Kiko, S.p.A. (“Opposer” or “Kiko”), is an Italian-based company with over 700 stores in many European countries – and now the United States. Since its founding, the KIKO brand has generated a reputation for fine quality goods and services in the cosmetics and skin care industry. That reputation, born in Europe, today extends to the United States after Kiko’s founder, Stefano Percassi, discovered that Kiko’s products were popular among American tourists in Europe and brought the brand to the States. To that effect, Kiko is currently the owner of multiple trademark registrations for its KIKO and KIKO-formative marks in the United States, dating back to 2009, and covering goods and services, including but not limited to makeup, cosmetics, skincare products, perfumes and haircare products; spectacles and jewelry; and retail store services related thereto.

Today, Kiko owns and operates multiple KIKO-branded stores on the east and west coasts of the United States, with significant sales totaling over \$2 million in 2014 alone.

As the owner of a prominent international brand, Kiko engages in a constant struggle to police its brand from infringement and appropriation by third parties of brands likely to both cause confusion and/or erode away the distinctive quality of the KIKO brand. Understandably, Kiko wishes to protect its brand to the fullest extent due to its popularity, reputation, sales, and advertising expenditures in the United States. Since 2014, Kiko has sent dozens of demand letters, and on at least five (5) occasions, has filed Oppositions against competitors adopting trademarks likely to cause confusion as to the source of its goods in the minds of the consuming public.

Applicant, Dooyeon Corp. (“Applicant” or “Dooyeon”) is one such competitor, and the owner of an application for trademark protection of the KICHO and design mark that is the subject of the instant Opposition. The KICHO and design mark is highly similar to the KIKO

trademark in sight, sound, meaning, and commercial impression. Moreover, the Application for the mark KICHO and design seeks trademark protection for cosmetics and skin care products, which are identical to the goods covered by Opposer's KIKO marks, registered in the U.S. since 2009 and currently in use in United States commerce. Because these most prominent factors (and others) all weigh heavily in Kiko's favor, a likelihood of confusion with Opposer's KIKO mark has been established.

As set forth below, Kiko has presented compelling evidence of a likelihood of confusion, thus, permitting this Honorable Board to refuse registration of Application Serial No. 86/053,930 for the mark KICHO and design, under Section 2(d) of the Lanham Act and thereby sustain Kiko, S.p.A.'s Notice of Opposition.

II. DESCRIPTION OF THE RECORD

Opposer relies upon the following materials:

1. Opposer's Notice of Reliance filed on October 28, 2015 pursuant to 37 C.F.R. §§ 2.120(j), 2.122(d) and 2.122(e).
 - a. Certified Status and Title Copies of the following United States Trademark Registrations:
 - i. Registration No. 4,690,585 for KIKO MAKE UP MILANO.
 - ii. Registration No. 3,650,052 for KIKO.
 - iii. Registration No. 3,689,438 for KIKO.
 - iv. Registration No. 4,065,381 for KIKO.
 - b. Applicant's Answers to Opposer's Interrogatories: Answer Nos. 1, 4, 6, 9, 15-17, 22, 24-25, 27-28, and 30.
 - c. Affidavit of Opposer's Managing Director Stefano Percassi, dated October 27, 2015, and accompanying Exhibits A-H, submitted pursuant to Board Order of September 29, 2015, permitting, per Trademark Rule 37 CFR § 2.123(b), that the testimony of all witnesses be in the form of an affidavit.
2. Applicant's Notice of Reliance dated December 27, 2015.

III. STATEMENT OF THE ISSUES

The issue for the Board's resolution in this matter is whether there is a likelihood of confusion between Opposer's registered KIKO marks which are the subject of U.S. Reg. Nos. 4,690,585; 3,650,052; 3,689,438; and 4,065,381 (the "KIKO Marks"), covering *inter alia*, cosmetics, skin care products and other beauty products, and Applicant's mark, "KICHO and design", subject of Application Serial No. 86/053,930 and covering skin care products and various cosmetic products.

IV. STATEMENT OF FACTS

A. Opposer Kiko, S.p.A. and its KIKO Marks

Kiko is a premier Italian-based company offering cosmetics, professional make-up, and cutting-edge face and body treatments. Opposer’s Notice of Reliance, Exhibit III, Affidavit of Stefano Percassi, ¶¶ 5-6 (hereinafter in this section, “Percassi Aff.”) Kiko was founded in 1997 by the Percassi Group and maintains its corporate offices in Bergamo, Italy. Percassi Aff., ¶¶ 5-6. Kiko currently has more than 700 KIKO MILANO-branded retail stores located in Italy, Germany, France, Portugal, Spain, the United Kingdom, Austria, Switzerland, the Netherlands, Belgium, Poland, and the United States. Percassi Aff., ¶¶5-6.

Since its founding, Opposer has adopted the “KIKO” brand – an arbitrary term with no intended meaning behind it – as a trademark in connection with cosmetics, skin care products, and other beauty-related products. Percassi Aff., ¶¶ 6-7. The KIKO Marks have been used continuously on products offered in United States via online websites since as early as 2010. Percassi Aff., ¶ 6. The first KIKO-branded retail store opened in the United States on March 20, 2014, and Kiko has since opened 17 additional stores located in the states of New York, New Jersey, Connecticut, Rhode Island, Virginia, Maryland, Nevada, Florida and California. Percassi Aff., ¶ 6. KIKO-branded products are advertised, marketed, and sold as affordable European-designed and produced products for every consumer; without a particular targeted consumer. Percassi Aff., ¶ 9.

Kiko sells its KIKO-branded goods in the United States through its website, <http://www.kikocosmetics.com/en-us>, as well as in its KIKO-branded retail stores in the aforementioned states. Percassi Aff., ¶ 10. It markets, advertises, and promotes its goods through its website as well as social media such as Facebook, Instagram, Twitter, and YouTube. Percassi Aff., ¶ 11. Kiko has generated substantial goodwill as a result of its marketing efforts

(over 470,000 Instagram followers and 9,700,000 YouTube video views as of October 2015), and this goodwill has translated into an excess of \$2 million in United States sales in 2014 alone. Percassi Aff., ¶¶ 10-11. Kiko sold over 250,000 units of KIKO-branded products in the United States in 2014, a fact helping to contribute to the wide recognition of the KIKO Marks in the cosmetic, skin care and fashion industries as a source of high quality and affordable cosmetics, skin care, and related products. Percassi Aff., ¶¶ 10, 12.

Kiko is the registrant and present owner of the following United States Trademarks for the mark KIKO:

- No. 3,650,052 for the mark KIKO covering makeup for women;
- No. 3,689,438 for the mark KIKO covering perfumes, toilet soaps, cosmetics, namely deodorants for personal use; creams, lotions and oils for the face and body; skin cleansing milks, creams and oils; make-up creams; beauty masks; make-up removers; eye shadows; lipsticks; mascara, rouge; crayons for the eyes and lips; face and body powders; sun tanning and after sun exposure creams, oils and lotions; pre and after shave lotions; talcum powders, bath salts, bath foam, bath oil; hair shampoo, hair lotions; depilatory preparations; nail enamels and polishes;
- No. 4,065,381 for the mark KIKO covering Spectacles, cases and chains for spectacles, frames for spectacles, optical lenses; and Jewelry and costume jewelry, namely rings, bracelets, necklaces, tie-bars, scarf rings, pendants, ear clips, tie clips, cufflinks, earrings, key holders made of precious metals, brooches, pins being jewelry; clocks, watches, chronographs for use as watches, chronometers