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

Proceeding	91218616
Party	Plaintiff Brown Brothers Harriman & Co.
Correspondence Address	Brown Brothers Harriman & Co. 140 Broadway New York, NY 10005 UNITED STATES abaden@edgelawgroup.com
Submission	Motion to Amend Pleading/Amended Pleading
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Signature	/Allen J Baden/
Date	01/29/2015
Attachments	Motion for Leave to Amend Black Beverly Hills BBH 2015-01-29.pdf(402893 bytes) Exhibit A.pdf(460361 bytes) Exhibit B.pdf(915158 bytes) Exhibit C.pdf(379496 bytes) Exhibit D.pdf(836933 bytes) Exhibit E.pdf(1338327 bytes)

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

In re the Application of:	Robert Berry
Serial No.:	86160577
Filed:	January 8, 2014
For the Alleged Mark:	BBH

Published in the Official Gazette on June 3, 2014,

Brown Brothers Harriman & Co.,)	
)	Opposition No. 91218616
Petitioner,)	
)	
v.)	
)	
Robert Berry,)	
)	
Applicant.)	
_____)	

**PETITIONER'S NOTICE OF MOTION AND MOTION
FOR LEAVE TO FILE A FIRST AMENDED NOTICE OF OPPOSITION**

TO APPLICANT:

PLEASE TAKE NOTICE that pursuant to Rule 15(a) of the Federal Rules of Civil Procedure and Section 507.02 of the Trademark Trial and Appeal Board Manual of Procedure, Petitioner Brown Brothers Harriman & Co. ("Petitioner") hereby moves the Board for an order granting Petitioner leave to file a First Amended Notice of Opposition in the form attached as Exhibit A against U.S. Trademark Application Serial No. 86160577, filed under Section 1(a) (the "Application") by Applicant Robert Berry ("Applicant"). By this Motion and the First Amended Notice of Opposition, Petitioner pleads as new and separate grounds for opposition: (a) Applicant's non-use of the alleged mark in commerce for many of the goods listed in the Application; (b) Applicant's lack of ownership of the alleged mark shown in the Application; and (c) Applicant's fraud in representing to the United States Patent and Trademark Office

that he had used the mark in commerce prior to the filing date of the Application and that he had used the mark for all the goods described in the Application.

Petitioner's Motion for Leave to File a First Amended Notice of Opposition ("Motion") is based upon Petitioner's Brief in Support that accompanies this Notice, the proposed First Amended Notice of Opposition attached as Exhibit A, Applicant's responses to Petitioner's Requests for Production, Applicant's social media posts and online website for Black Beverly Hills apparel, and such other arguments and evidence as may be presented to the Board.

Dated: January 29, 2015

Respectfully submitted,

Edge Law Group

/Allen J. Baden/_____

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Applicant.)	
_____)	

PETITIONER'S BRIEF IN SUPPORT OF ITS MOTION FOR LEAVE TO FILE
A FIRST AMENDED NOTICE OF OPPOSITION

Petitioner moves the Board for an order granting Petitioner leave to file a First Amended Notice of Opposition, in the form attached as Exhibit A, to add claims based upon: (a) Applicant's non-use of the alleged mark in commerce prior to the filing date of the above-identified Application; (b) Applicant's lack of ownership of the mark shown in the Application; and (c) Applicant's fraud in knowingly making false representations to the PTO during prosecution of the Application.

BACKGROUND

Founded in 1818, Petitioner, commonly referred to and operating under the BBH trademark and trade name since at least as early as 1931, owns 25 active trademark registrations and three pending applications for the BBH mark and variants thereof for a wide variety of goods and services.

On January 8, 2014, Applicant filed the Application for a laundry list of goods in Class 25, namely *clothing, namely, tops, bottoms, shirts, shoes, socks, underwear, sleepwear, sweat shirts, sweat pants, hooded sweat shirts, sweat jackets, sweat shorts, gloves, jackets, hats, head wear, and pants*, as reflected by the printout attached as Exhibit B.

On October 1, 2014, Petitioner pleaded priority of use in its BBH trademarks and that Applicant's BBH trademark is identical and confusingly similar to Petitioner's BBH trademarks in its original Notice of Opposition, attached as Exhibit C.

Petitioner served Interrogatories and Requests for Production of Documents to Applicant on December 1, 2014, copies of which the Petitioner attaches as Exhibit D. Applicant responded to Petitioner's Requests for Production on January 2, 2015, a copy of which response is attached as Exhibit E.

Applicant's responses to the Requests for Production and Petitioner's independent investigation led Petitioner to conclude that Applicant has not used and continues to fail to use the mark as described in the Application. Therefore, Petitioner seeks to amend its Notice of Opposition to include claims for non-use of the alleged mark in commerce by Applicant, lack of ownership of the alleged mark by Applicant, and fraud perpetrated by Applicant on the PTO in his prosecution of the Application.

STANDING

Standing is a low threshold inquiry "directed solely to establishing plaintiff's interest in the proceeding." *Harjo v. Pro Football, Inc.*, 30 USPQ2d 1828, 1830 (TTAB 1994)." The Federal Circuit has stated that an opposer need only show "a personal interest in the outcome of the case beyond that of the general public." *Jewelers Vigilance Committee, Inc. v. Ullenberg Corp.*, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987) (*citing Lipton Industries, Inc. v. Ralston Purina Co.*, 213 USPQ 185, 188 (CCPA 1982).

Petitioner has standing to oppose the Application because it is inimical to Petitioner's rights and interests. For example, should the Application mature to registration, Applicant will be considered to have *prima facie* ownership of the alleged mark, which is contrary to Petitioner's rights therein. Additionally, Petitioner may be precluded from registering the BBH mark in connection with clothing or other goods if the PTO allows the alleged BBH Mark to mature to registration. Thus, Petitioner has standing in this proceeding.

ARGUMENT

I. THE BOARD SHOULD GRANT PETITIONER LEAVE TO AMEND ITS NOTICE OF OPPOSITION TO PLEAD NON-USE IN COMMERCE, LACK OF OWNERSHIP, AND FRAUD.

Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend a pleading "shall be freely given when justice so requires." Fed.R.Civ.P. 15(a). Consistent with this rule, the Board "liberally grants leave to amend pleadings at any stage of the proceeding when justice requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties." *Gerald David Giersch, Jr. and Benjamin J. Giersch v. Scripps Networks, Inc.*, 2007 WL 1653585, *5 (TTAB 2007); *see also Hurley International LLC v. Paul and Joanne Volta*, 2007 WL 196407, *2 (TTAB 2007) ("[l]eave to amend pleadings must be freely given when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party."); *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1505 (TTAB 1993). Under this liberal standard, the Board has permitted amendments even during trial under Rule 15(a). *See* TBMP §507.02 and cases cited therein.

In deciding on a motion to amend, the Board must consider whether there is undue prejudice to the applicant and whether the amendment is legally sufficient. *Hurley International LLC v. Paul and Joanne Volta*, 2007 WL 196407, *2 (TTAB 2007).

II. APPLICANT WILL NOT SUFFER PREJUDICE IF THE BOARD GRANTS PETITIONER'S TIMELY MOTION.

Applicant suffers no prejudice from the Board granting Petitioner leave to amend its Notice of Opposition. This proceeding is in its infancy with discovery not scheduled to close until June 8, 2015. Moreover, the basis for the amendment is Applicant's own responses to Petitioner's Requests for Production, namely, evidence that Applicant had not used the mark in commerce as of the filing date of the Application, that Applicant is the owner of the mark, and that his representations to the contrary to the PTO were fraudulent. By definition, these matters are uniquely within Applicant's own knowledge.

In addition, the Motion is timely. The amendment to its Notice of Opposition Petitioner seeks is based on new evidence discovered from Applicant's responses to Petitioner's Requests for Production. *Compare Karsten Manufacturing Corp. v. Editoy AG*, 79 USPQ2d 1783, 1786 (TTAB 2006) (motion for leave to amend pleading granted because grounds for new claim was learned during discovery) *with International Finance Corporation v. Bravo Co.*, 64 USPQ2d 1597, 1604 (TTAB 2002) (motion denied where although discovery was still open, movant provided no explanation for two-year delay in seeking to add a new claim).

III. THE PROPOSED AMENDMENTS TO THE NOTICE OF OPPOSITION ARE LEGALLY SUFFICIENT.

The proposed amendments are legally sufficient for the Board to grant the Motion for leave to amend. Petitioner may raise any statutory ground for opposition, having established its standing to oppose the registration of Applicant's alleged mark based on Petitioner's rights in the BBH mark. *See Marmark Ltd. v. Nutrexpa, S.A.*, 12 USPQ2d 1843, 1844 (TTAB 1989). Non-use of a mark in commerce prior to the filing date of a use-based application is a proper ground for opposition, *see, e.g., Greyhound Corp. v. Armour Life Ins. Co.*, 214 USPQ 473, 475 (TTAB 1982); *Intermed Communications, Inc. v. Chaney*, 197 USPQ 501, 507-08 (TTAB 1977), as are lack of ownership of the mark at the time of filing a use-based application and fraud. *See, e.g., Chien Ming Huang v. Tzu Wei Chen Food Co., Ltd.*, 849 F.2d 1458,

7 USPQ2d 1335 (Fed. Cir. 1988) (lack of ownership); *National Semiconductor Corp. v. Varian Associates*, 184 USPQ 62, 64 (TTAB 1974) (fraud).

A. Applicant had not used the Alleged Mark in Commerce as of the Date he filed the Use-Based Application.

A trademark is used in commerce when the mark "is placed in any manner on the goods or their containers or the displays associated therewith or on tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale; and the goods are sold or transported in commerce." *The John W. Carson Foundation v. Toilets.com, Inc.*, 2010 WL 1233881, *8 (TTAB 2010) (*citing* the Trademark Act Section 45).

Applicant states that the "first use [of the alleged mark] was when Black Beverly Hills was formed." See Exhibit E, Response to Request No. 2.¹ Contrary to Applicant's assertion, the evidence Petitioner located reveals that Applicant did not use the BBH mark on t-shirts until July 6, 2011 (well after the June 1, 2010 date Applicant claims in the Application), and has not used the mark for all the goods claimed in the Application.

B. Applicant Failed to Use the Mark in Commerce for the Goods Claimed in the Application.

The "use" necessary to support federal registration of a trademark is use in the "ordinary course of trade," not just token use. McCarthy on Trademarks, Section 19:109 (4th ed., 2014). Section 45 of the Lanham Act defines "use in commerce" as meaning the "bona fide use of a mark in the ordinary course of trade, and not merely to reserve a right in a mark." *Id.* The foregoing definition of "use in commerce" is consistent with the House Judiciary Committee's intent to eliminate the practice of making a single shipment "token use" solely for the purpose of a reserving a mark. House Judiciary Cmte. Rpt. on H.R. 5372, H.R. No. 100-1028, p. 15 (Oct. 3, 1988).

¹ Applicant's Black Beverly Hills clothing entity does not appear to have been incorporated or otherwise formed or registered with any local or state authorities, which itself is in contravention of California Corporate Code Section 2105(a) and California Business and Professions Code Section 17918.

Petitioner believes that Applicant has never used the alleged mark in commerce for socks, shoes, underwear, sleepwear, and gloves, and in the alternative, if the Applicant used it for such goods, such use was token use and does not constitute use under the Trademark Act. In fact, the Trademark Law Revision Act was enacted to eliminate token use as a basis for registration, and "the new, stricter standard contemplates instead commercial use of the type common to the particular industry in question." *Paramount Pictures Corp v. White*, 31 USPQ2d 1768, 1774 (TTAB 1994). Even if Applicant applied the alleged mark to socks, shoes, underwear, sleepwear, and gloves, for which there is no evidence, Petitioner contends that such use was merely for samples or prototypes and does not constitute "bona fide use of a mark in the ordinary course of trade;" rather, it seems precisely calculated "merely to reserve a right in a mark," which is legally insufficient.

In summary, Petitioner believes that Applicant's failure to use the alleged mark for some or all of the goods claimed in the Application means that Applicant cannot assert ownership of the mark for such goods.

C. Applicant's Representations to the PTO that the Alleged Mark had been used in Commerce since June 1, 2010, and for the Goods Described in the Application are Fraudulent.

The relevant standard for proving fraud is set forth in *In re Bose Corp*, 580 F.3d 1240, 1244-45 (Fed. Cir. 2009), and requires a showing of the four elements below:

1. Applicant made a false representation to the PTO;
2. The false representation is material to the registrability of a mark;
3. Applicant had knowledge of the falsity of the representation; and
4. Applicant made the representation with intent to deceive the PTO.

See id.; see also *O.T.H Enterprises, Inc. d/b/a Frontera Music v. Federico Estevan Vasquez*, 2012 WL 5196156, *16 (TTAB 2012) (not citable as precedent).

In this case, Applicant knowingly made multiple false material representations to the PTO, including his representations regarding the date he first used the alleged mark in commerce and that he used the alleged mark for all the goods described in the Application, wholly with the intent to deceive the PTO.

1. Applicant made false representations to the PTO.

Applicant made materially false representations to the PTO in pursuing registration of the opposed mark. In particular, Applicant identified 17 goods in the Application for which he claimed a first use in commerce date of June 1, 2010. See Exhibit B. Conflicting directly with the Application, evidence Petitioner obtained from Applicant and Petitioner's own investigation indicates that Applicant first used the alleged mark on July 6, 2011, and merely for t-shirts. See Exhibit E. Subsequently, Applicant began using the alleged mark on sweatshirts, sweatpants, hats and shorts.

As of the filing of the Motion, Petitioner has been unable to locate any evidence that demonstrates Applicant's use of the BBH mark for socks, shoes, underwear, sleepwear and gloves. Accordingly, Petitioner believes that Applicant made numerous, material false representations to the PTO in connection with his prosecution of the Application.

2. The false representations are material to the registrability of a mark.

Case law establishes that representations as to the use of a mark for particular goods and as to the alleged dates of first use are material to the PTO publishing a trademark application. See *Nationstar Mortgage, LLC v. Mujahid Ahmad*, 2014 WL 6480655, *3 (TTAB 2014) ("[a]n applicant's statements as to its use of a mark for particular goods and services are unquestionably material to registrability."); *Hiraga*

v. Arena, 90 USPQ2d 1102, 1107 (TTAB 2009) ("the critical question in this case is whether the mark was in use in connection with the identified goods as of the filing date of [the Applicant's] use-based application."); *In Re Bose Corp.*, 580 F.3d 1240, 1246 (Fed. Cir. 2009) (finding the statement in the renewal application that the mark was in use in commerce on all goods was a material misrepresentation); *Hachette Filipacchi Presse v. Elle Belle LLC*, 85 USPQ2d 1090, 1093 (TTAB 2007) ("the law is clear that an applicant may not claim a Section 1(a) filing basis unless the mark was in use in commerce on or in connection with *all* goods or services covered by the Section 1(a) basis as of the application filing date.") (citing 37 C.F.R. Section 2.34(a)(1)(i)).

Under oath, Applicant represented that (a) he had used the alleged mark for all goods listed in the Application, and (b) he had used the alleged mark in commerce for the listed goods as of the claimed date of first use and as of the filing date. These statements were material to the PTO publishing the Application because the PTO will not publish a Section 1(a) use-based application covering goods upon which an alleged mark had not been used. *See* 15 U.S.C. §1051(a)(3)(C); 37 C.F.R. §2.34(a)(1)(i); TMEP §901 ("[i]n an application based on use in commerce under §1(a) of the Trademark Act, 15 U.S.C. §1051(a), the applicant must use the mark in commerce on or in connection with all the goods and services listed in the application as of the application filing date."); TMEP §903.02 ("[i]n a §1(a) application, the applicant may not specify a date of use that is later than the filing date of the application.").

As Applicant's false representations were material to the PTO publishing the Application, the only remaining issue is whether the representations made by Applicant were with the requisite knowledge and intent.

3. Applicant had knowledge of the falsity of the representation.

Applicant is a sole proprietor. As such, Applicant had personal knowledge regarding the identity of the goods he sold under the alleged mark and when such use commenced.

D. Applicant made the false representations with an intent to deceive the PTO.

Fraudulent intent may be inferred from the circumstances surrounding the filing of an application. *See Nationstar Mortgage, LLC v. Mujahid Ahmad*, 2014 WL 6480655, *13 (TTAB 2014) ("the law does not require 'smoking gun' evidence of deceptive intent but instead has long recognized that direct evidence of deceptive intent is rarely available and deceptive intent may be inferred from the surrounding facts and circumstances."); *see also In re Bose Corp.*, 580 F.3d 1240, 1245-46 (Fed. Cir. 2009); *Medinol Ltd. v. Neuro Vasx, Inc.*, 2003 WL 21189780, *5 (TTAB 2003); *General Car and Truck Leasing Systems, Inc. v. General Rent-A-Car Inc.*, 17 USPQ2d 1398, 1400 (S.D. Fla. 1990).

When Applicant signed the oath in the Application, he knew that his claims of use of the alleged mark in commerce were fraudulent. He had not used the alleged mark for any goods as of the claimed date of first use in commerce and Applicant's continued failure to use the BBH mark for socks, shoes, underwear, sleepwear and gloves as of the date of the Motion demonstrates an intent to deceive the PTO.

The oath Applicant signed is not lengthy or confusing and the list of goods he detailed is information Applicant had in his possession. Under these circumstances, Applicant could not have reasonably and actually believed that he had made valid use in commerce of the alleged mark for the goods identified in the Application. His contrary representations to the PTO were fraudulent as a matter of law.

CONCLUSION

For the foregoing reasons, Petitioner request that the Board grant Petitioner leave to file its First Amended Notice of Opposition to assert the above described additional grounds for refusal of registration.

Dated: January 29, 2015

Respectfully submitted,

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/Allen J. Baden/

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Attorneys for Brown Brothers Harriman & Co.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petitioner's Notice of Motion and Motion for Leave to File a First Amended Notice of Opposition, and Brief in Support of Petitioner's Motion for Leave to File a First Amended Notice of Opposition was transmitted to the named Applicant by email with service by First Class Mail, postage prepaid, the 30th day of January 2015, addressed as follows:

Robert Berry
4401 W Slauson Ave.
Los Angeles California 90043
thisisrobchina@gmail.com

/Allen J. Baden/
Allen J. Baden

4835-7832-0929, v. 1

EXHIBIT A

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

In re Application of: Robert Berry dba Black Beverley Hills

Serial No.: 86160577

Filed: January 8, 2014

For the Mark: BBH in International Class 25

Date of Publication: June 3, 2014
Page TM 882

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

(FIRST AMENDED) NOTICE OF OPPOSITION

Brown Brothers Harriman & Co., a limited partnership organized under the laws of New York having its principal place of business at 140 Broadway, New York, New York 10005 ("Opposer"), believing that it will be damaged by registration of the alleged "BBH" word mark claimed in U.S. Trademark Application Serial No. 86160577 (the "Challenged Application"), hereby opposes the same.

As grounds for its opposition, Opposer alleges as follows, with knowledge concerning its own acts, and on information and belief as to all other matters:

1. Applicant, Robert Berry, having an address at 4401 West Slauson Avenue, Los Angeles, California 90043 ("Applicant"), owns and is the applicant of record of the Challenged Application.
2. By the application herein opposed, Applicant is seeking to obtain registration for "BBH" for the following goods in International Class 25: Clothing, namely, tops, bottoms, shirts, shoes, socks, underwear, sleepwear, sweat shirts, sweat pants, hooded sweat shirts, sweat jackets, sweat shorts, gloves, jackets, hats, head wear, and pants.
3. Opposer attaches a copy of page TM 882 from the Official Gazette of June 3, 2014, in which the U.S. Patent and Trademark Office published this application, as Exhibit A to this paper.
4. The Applicant filed for the instant application under Section 1A of the Trademark Act on January 8, 2014.
5. Opposer, Brown Brothers Harriman & Co., which commonly refers to itself and is known as "BBH," and operates the website <bbh.com>, is the oldest and largest partnership bank in the United States. Opposer operates in six domestic and eight overseas locations with approximately 4,000 employees. In addition to providing commercial banking services, Opposer is among the leading providers of global custody, fund administration, transfer agency, foreign exchange, private equity, merger and acquisition services, investment management for individuals and institutions, personal

trust and estate administration and securities brokerage services, and provides a myriad of products, including promotional items, in conjunction with those services.

6. Opposer is the owner of 25 active registrations and 3 pending applications for the BBH mark and variants thereof for a wide variety of goods and services, including the U.S. Registrations identified in the below table. Opposer attaches and makes of record a copy of the electronic record for each of the U.S. Registrations identified below, prepared and issued by the Office showing both the status of and title to the registrations, as Exhibit B to this paper.

Mark	Reg. No.	Recitation of Goods or Services
BBH	3660883	(INT. CL. 42) providing temporary use of non-downloadable financial service software for use in analyzing financial data and generating financial reports
BBH	3594879	(INT. CL. 9) software for banking, trust and investment management, namely, software for asset data management and reporting, foreign exchange services, funds investment and management, investment fund transfers, and brokerage services
BBH	3594867	(INT. CL. 36) banking and investment services; namely, investment management, investment advice, funds investment, investment brokerage, investment consultation and investment of funds for others; financial analysis and investment advisory services, namely, management and brokerage in the fields of stocks, bonds, options, futures and other securities, and the investment of funds of others; financial research services; investment consultation, funds investment, and investment management; financial exchange services, namely, providing financial information in the nature of rates of exchange; financial information processing; financial information provided by electronic means; financial portfolio management; financial risk management; financial services, namely, assisting others with the completion of financial transactions for stocks, bonds, securities and equities; providing information in the fields of foreign currency, commodities, financial derivatives, interest rate products, and equities via the internet and intranet systems; investment fund transfer and transaction services; providing on-line stored value accounts in an electronic environment; investment fund transfer and transaction services; providing for the exchange of foreign currency, commodities, financial derivatives, interest rate products, and equities via the internet and intranet systems; trust and estate administration services, namely, investment management, custody of assets, selection of brokers, collection and valuation of assets, bill paying, recordkeeping and accountings, tax return preparation and filing, income tax planning for trusts, grantors and beneficiaries, review and analysis of will and trust documents; trust company services, namely, institutional trust services, charitable foundation services, client tax services, escrow arrangements, estate planning, financial planning, individual retirement planning, philanthropic planning, retirement trusts, trust and estate administration, donor-advised fund program; wealth management services, namely, alternative investments, asset allocation, risk management for concentrated positions; developing and managing a family of alternative investment funds, investment management services to institutional clients, investment advisory and portfolio management services; banking and advisory services, namely, term loans and revolving lines of credit, acquisition finance, subordinated debt financing, trade letters of credit, standby letters of credit, corporate cash management services, foreign exchange, mergers and acquisitions, advisory, 401k and defined benefit plans, investment management; custody services; equity execution services; equity strategy research services; equity trading services, namely, global custody, accounting, administration, transfer agency, securities lending, performance reporting, financial reporting, compliance, brokerage; providing a suite of fund accounting services, namely, multi-currency portfolio valuation, fund accounting, and reporting services; financial and legal administration services for a comprehensive service suite, namely, fund accounting, financial reporting, expense analysis and payment, assistant treasurer's support, performance measurement, compliance, tax support and regulatory and corporate secretarial assistance, namely, board reporting, regulatory filings and consulting services; consulting and advisory services for both qualified and nonqualified retirement plans; serving as a connectivity point between financial service companies and their external service providers and internal system; providing a hosted communications platform for financial services; institutional fund services, namely, serving as product manager for third party investment funds; serving as a financial advisor to middle market businesses across a broad range of industries with a focus on healthcare services, medical technology, telecommunications and media, and outsourced business services; advisory ...

Mark	Reg. No.	Recitation of Goods or Services
BBH DIRECT	3541186	(INT. CL. 36) financial analysis and consultation; financial clearing houses; financial exchange; financial forecasting; financial information in the nature of rates of exchange; financial information processing; financial information provided by electronic means; financial portfolio management; financial research; financial risk management; financial services, namely, assisting others with the completion of financial transactions for stocks, bonds, securities and equities; financial services, namely, providing information in the fields of foreign currency, commodities, financial derivatives, interest rate products, and equities via the internet and intranet systems; financial services, namely, investment fund transfer and transaction services; financial services, namely, providing for the exchange of foreign currency, commodities, financial derivatives, interest rate products, and equities via the internet and intranet systems; financial trust operations; banking; on-line banking services
BBH INFOFX	3481476	(INT. CL. 35) financial records management
BBH COMSET PLUS	2515357	(INT. CL. 36) mutual fund brokerage services; mutual fund investment services; investment management services; investment consultation services; investment advisory services; banking services; custody services relating to financial assets
BBH COMSET PLUS	2585041	(INT. CL. 36) mutual fund brokerage services; mutual fund investment services; investment management services; investment consultation services; investment advisory services; banking services; custody services relating to financial assets
BBH COMSET	2520159	(INT. CL. 36) mutual fund brokerage services; mutual fund investment services; investment management services; investment consultation services; investment advisory services; banking services; custody services relating to financial assets
BBHCONNECT	2628823	(INT. CL. 36) financial services offered via a global computer network for executing financial transactions and stock trades
BBH & CO.	1492559	(INT. CL. 36) banking services
BBH & CO.	1575488	(INT. CL. 36) banking services
BBH & CO.	1561346	(INT. CL. 36) banking services

7. Opposer owns broad common law trademark rights in the BBH mark by virtue of its lengthy and continuous use of BBH as a trade name and its provision of goods and services under the BBH mark throughout the United States and around the world.
8. Consumers and the trade use Opposer's BBH mark to identify a myriad of goods and services provided by Opposer, including goods in Classes 25. Many of these goods are related to and provided to the same channels of trade and to the same customers as are many of the goods and services for which applicant now seeks registration of the subject alleged trademark.
9. By virtue of Opposer's efforts and the expenditure of considerable sums for promotional activities, and by virtue of the excellence of its goods and services, Opposer has gained for its BBH mark a most valuable reputation and exceedingly valuable goodwill.
10. The alleged trademark proposed for registration by the Applicant, namely, the letters BBH, is identical and confusingly similar to Opposer's BBH trademark.
11. The alleged mark in the Challenged Application "so resembles a mark registered in the Patent and Trademark Office or a mark previously used in the United States by another and not abandoned,"

namely Opposer's BBH trademark, "as to be likely when applied to the [goods and] services of Applicant, to cause confusion, or to cause mistake, or to deceive."

12. Moreover, the applied for trademark is not a "trademark by which the [goods and] services of the Applicant may be distinguished from the [goods and] services of others," namely the goods and services offered by Opposer under its BBH mark, which Opposer has used since well prior to the filing date of Applicant's application, and Opposer has never abandoned its trademark.
13. If the Applicant were permitted to use and register the BBH mark for its goods, as specified in the application herein opposed, confusion in the trade resulting in damage and injury to the Opposer would be caused and would result by reason of the substantial similarity between Applicant's mark and Opposer's mark.
14. Persons familiar with Opposer's goods and services may well confuse Applicant's goods and services as and for goods and services offered by Opposer. Furthermore, any defect, objection or fault found with Applicant's goods or services marketed under its alleged trademark would necessarily reflect upon and seriously injure the reputation that Opposer has established for the goods and services sold or provided under its trademark.
15. If the USPTO were to grant Applicant a registration for the alleged trademark herein opposed, it would obtain thereby at least the *prima facie* exclusive right to use said mark. Such registration would be inconsistent with Opposer's right to use its trademark BBH to identify the source of and describe Opposer's goods and services.
16. Accordingly, the Board should refuse and deny registration of Applicant's alleged trademark in accordance with Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d).
17. Additionally, Opposer believes that Applicant has not used the BBH Mark on or in connection with all of the goods as claimed in the instant Challenged Application and that Applicant falsely and knowingly claimed a date of first use of the BBH Mark in connection with those goods Applicant actually offers that precedes the actual date of first use in commerce for the mark by over a year.
18. In particular, Applicant committed fraud on the USPTO as a result of Applicant's (a) failure to use the BBH Mark in commerce for many of the goods listed in the application; (b) lack of ownership of the mark shown in the opposed application; and (c) knowingly false representation to the Patent and Trademark Office that Applicant had used the BBH Mark in commerce prior to the filing date of the opposed application.
19. The foregoing knowingly false representations that the Applicant made under oath to the USPTO constitute fraud on the USPTO and another ground upon which the Board should deny registration of the Challenged Application.
20. WHEREFORE, the Opposer prays that the Trademark Trial and Appeals Board reject application Serial No. 86160577, and that the registration of the mark therein sought for the goods therein specified be denied and refused, and that the Board sustain this Opposition.

Please address all future communications regarding this opposition to the following attorney of record for Opposer:

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Los Gatos CA 95030-7279
Email: abaden@edgelawgroup.com

Applicant files this Notice of Opposition electronically, pursuant to 37 C.F.R. § 2.1 04(a).

Respectfully submitted,

Dated:

By: / _____ /

Allen J. Baden
Edge Law Group
236 N Santa Cruz Ave Ste 228
Los Gatos CA 95030-7279
Telephone: (408) 827-4461
Email: abaden@edgelawgroup.com

Exhibit A

Except from the Official Gazette

Exhibit B

Printouts from USPTO Website

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Opposition was mailed to:

Robert Berry
4401 West Slauson Avenue
Los Angeles, California 90043

by the following indicated method:

By mailing full, true, and correct copies thereof in a sealed, first-class postage-prepaid envelope deposited with the United States Postal Service at Los Gatos, California, on the date set forth below.

DATED: this ___ day of _____ 2015.

/_____ /

EXHIBIT B

Trademark/Service Mark Application, Principal Register

Serial Number: 86160577

Filing Date: 01/08/2014

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86160577
MARK INFORMATION	
*MARK	BBH
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	BBH
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Berry, Robert
*STREET	4401 W Slauson Ave.
*CITY	Los Angeles
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	90043
PHONE	323 383 5243
EMAIL ADDRESS	Thisisrobchina@gmail.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY OF CITIZENSHIP	United States

GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	025
*IDENTIFICATION	Clothing, namely, tops, bottoms, shirts, shoes, socks, under wear, sleep wear, sweats, gloves, jackets, hats, head wear, and pants
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 06/01/2010
FIRST USE IN COMMERCE DATE	At least as early as 06/01/2010
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT16\IMAGEOUT16\861\605\86160577\xml1\ APP0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\861\605\86160577\xml1\ APP0004.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\861\605\86160577\xml1\ APP0005.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\861\605\86160577\xml1\ APP0006.JPG
SPECIMEN DESCRIPTION	digital images of shirts
ADDITIONAL STATEMENTS SECTION	
MISCELLANEOUS STATEMENT	The mark is distinctive to my company which is a registered trademark name Black Beverly Hills. I have been using the mark for almost 4 years. Reg no. 4,213,217
CORRESPONDENCE INFORMATION	
NAME	Berry, Robert
STREET	4401 W Slauson Ave.
CITY	Los Angeles
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	90043
PHONE	323 383 5243
EMAIL ADDRESS	Thisisrobchina@gmail.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	

NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Robert China Berry Jr/
SIGNATORY'S NAME	Robert Berry
SIGNATORY'S POSITION	Owner
DATE SIGNED	01/07/2014

Trademark/Service Mark Application, Principal Register

Serial Number: 86160577

Filing Date: 01/08/2014

To the Commissioner for Trademarks:

MARK: BBH (Standard Characters, see [mark](#))

The literal element of the mark consists of BBH.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Robert Berry, a citizen of United States, having an address of

4401 W Slauson Ave.

Los Angeles, California 90043

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 025: Clothing, namely, tops, bottoms, shirts, shoes, socks, under wear, sleep wear, sweats, gloves, jackets, hats, head wear, and pants

In International Class 025, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 06/01/2010, and first used in commerce at least as early as 06/01/2010, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) digital images of shirts.

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

The mark is distinctive to my company which is a registered trademark name Black Beverly Hills. I have been using the mark for almost 4 years. Reg no. 4,213,217

The applicant's current Correspondence Information:

Berry, Robert

4401 W Slauson Ave.

Los Angeles, California 90043

323 383 5243(phone)

Thisisrobchina@gmail.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her 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; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Robert China Berry Jr/ Date: 01/07/2014

Signatory's Name: Robert Berry

Signatory's Position: Owner

RAM Sale Number: 86160577

RAM Accounting Date: 01/09/2014

Serial Number: 86160577

Internet Transmission Date: Wed Jan 08 17:21:11 EST 2014

TEAS Stamp: USPTO/BAS-64.129.109.154-201401081721114

55494-86160577-500f1b4428ecb3744bd4c3ecd

e7651f16eb394e0b0a6ab613733b7bca2b9fd8f2

-DA-4412-20140107130244309497

BBH



100% COTTON
MADE IN USA

BBH

Black Beverly Hills

LARGE

Made In Los Angeles

100% Cotton

Machine Wash Cold

Tumble Dry Low

www.BlackBH.com









Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Mon Jan 26 03:21:01 EST 2015

- [TESS HOME](#)
- [NEW USER](#)
- [STRUCTURED](#)
- [FREE FORM](#)
- [BROWSE DICT](#)
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Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 1 out of 25**

- [TSDR](#)
 - [ASSIGN Status](#)
 - [TTAB Status](#)
- (Use the "Back" button of the Internet Browser to return to TESS)

BBH

Word Mark **BBH**

Goods and Services IC 025. US 022 039. G & S: Clothing, namely, tops, bottoms, shirts, shoes, socks, underwear, sleepwear, sweat shirts, sweat pants, hooded sweat shirts, sweat jackets, sweat shorts, gloves, jackets, hats, head wear, and pants. FIRST USE: 20100601. FIRST USE IN COMMERCE: 20100601

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86160577

Filing Date January 8, 2014

Current Basis 1A

Original Filing Basis 1A

Published for Opposition June 3, 2014

Owner (APPLICANT) Berry, Robert INDIVIDUAL UNITED STATES 4401 W Slauson Ave. Los Angeles CALIFORNIA 90043

Prior Registrations 4213217

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead LIVE

Indicator

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST	NEXT LIST	FIRST DOC
PREV DOC	NEXT DOC	LAST DOC									

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

EXHIBIT C

ESTTA Tracking number: **ESTTA630374**

Filing date: **10/01/2014**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Brown Brothers Harriman & Co.
Granted to Date of previous extension	10/01/2014
Address	140 Broadway New York, NY 10005 UNITED STATES

Correspondence information	Brown Brothers Harriman & Co. 140 Broadway New York, NY 10005 UNITED STATES abaden@edgelawgroup.com Phone:4088274461
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Applicant Information

Application No	86160577	Publication date	06/03/2014
Opposition Filing Date	10/01/2014	Opposition Period Ends	10/01/2014
Applicant	Berry, Robert 4401 W Slauson Ave. Los Angeles, CA 90043 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2010/06/01 First Use In Commerce: 2010/06/01 All goods and services in the class are opposed, namely: Clothing, namely, tops, bottoms, shirts, shoes, socks, underwear, sleepwear, sweat shirts, sweat pants, hooded sweat shirts, sweat jackets, sweat shorts, gloves, jackets, hats, head wear, and pants
--

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3660883	Application Date	01/27/2009
Registration Date	07/28/2009	Foreign Priority Date	NONE
Word Mark	BBH		

Design Mark	<h1>BBH</h1>		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 providing temporary use of non-downloadable financial service software for use in analyzing financial data and generating financial reports		

U.S. Registration No.	3594879	Application Date	10/09/2008
Registration Date	03/24/2009	Foreign Priority Date	NONE

Word Mark	BBH		
Design Mark	<h1>BBH</h1>		
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2000/01/02 First Use In Commerce: 2000/01/02 Software for banking, trust and investment management, namely, software for asset data management and reporting, foreign exchange services, funds investment and management, investment fund transfers, and brokerage services		

U.S. Registration No.	3594867	Application Date	10/02/2008
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	BBH		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 036. First use: First Use: 1931/01/02 First Use In Commerce: 1931/01/02 banking and investment services; namely, investment management, investment advice, funds investment, investment brokerage, investment consultation and investment of funds for others; financial analysis and investment advisory services, namely, management and brokerage in the fields of stocks, bonds, options, futures and other securities, and the investment of funds of others; financial research services; investment consultation, funds investment, and investment management; financial exchange services, namely, providing financial information in the nature of rates of exchange; financial information processing; financial information provided by electronic means; financial portfolio management; financial risk management; financial services, namely, assisting others with the completion of financial transactions for stocks, bonds, securities and equities; providing information in the fields of foreign currency, commodities, financial derivatives, interest rate products, and equities via the internet and intranet systems; investment fund transfer and transaction services; providing on-line stored value accounts in an electronic environment; investment fund transfer and transaction services; providing for the exchange of foreign currency, commodities, financial derivatives, interest rate products, and equities via the internet and intranet systems; trust and estate administration services, namely, investment management, custody of assets, selection of brokers, collection and valuation of assets, bill paying, recordkeeping and accountings, tax return preparation and filing, incometax planning for trusts, grantors and beneficiaries, review and analysis of will and trust documents; trust company services, namely, institutional trust services, charitable foundation services, client tax services, escrow arrangements, estate planning, financial planning, individual retirement planning, philanthropic planning, retirement trusts, trust and estate administration, donor-advised fund program; wealth management services, namely, alternative investments, asset allocation, risk management for concentrated positions; developing and managing a family of alternative investment funds, investment management services to institutional clients, investment advisory and portfolio management services; banking and advisory services, namely, term loans and revolving lines of credit, acquisition finance, subordinated debt financing, trade letters of credit, standby letters of credit, corporate cash management services, foreign exchange, mergers and acquisitions, advisory, 401k and defined benefit plans, investment management; custody services; equity execution services; equity strategy research services; equity trading services, namely, global custody, accounting, administration, transfer agency, securities lending, performance reporting, financial reporting, compliance, brokerage; providing a suite of fund accounting services, namely, multi-currency portfolio valuation, fund accounting, and reporting services; financial and legal administration services for a comprehensive service suite, namely, fund accounting, financial reporting, expense analysis and payment, assistant treasurer's support, performance measurement, compliance, tax support and regulatory and corporate secretarial assistance, namely, board reporting, regulatory filings and consulting services; consulting and advisory services for both qualified and nonqualified retirement plans;</p>

	<p>serving as a connectivity point between financial service companies and their external service providers and internal system; providing a hosted communications platform for financial services; institutional fund services, namely, serving as product manager for third party investment funds; serving as a financial advisor to middle market businesses across a broad range of industries with a focus on healthcare services, medical technology, telecommunications and media, and outsourced business services; advisory services to private and closely-held public companies; managing a series of private equity funds; outsourcing services, namely, front, middle and back office outsourced services, namely, restricted securities investigation, restricted securities processing, brokerage services; securities lending services, namely, custodial and third-party lending, auctions, borrower exclusives, and traditional agency lending; financial services, namely, electronic delivery system for financial investment and transaction initiation, trade settlement reporting and trade status tracking; providing an online payment and order authorization system; providing an Internet reporting system for the transmission of financial securities information to others; and managing mutual funds for others, namely, a mutual fund asset allocation program</p>
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U.S. Registration No.	3541186	Application Date	07/25/2007
Registration Date	12/02/2008	Foreign Priority Date	NONE
Word Mark	BBH DIRECT		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 036. First use: First Use: 2007/02/20 First Use In Commerce: 2007/02/20 Financial analysis and consultation; Financial clearing houses; Financial exchange; Financial forecasting; Financial information in the nature of rates of exchange; Financial information processing; Financial information provided by electronic means; Financial portfolio management; Financial research; Financial risk management; Financial services, namely, assisting others with the completion of financial transactions for stocks, bonds, securities and equities; Financial services, namely, providing information in the fields of foreign currency, commodities, financial derivatives, interest rate products, and equities via the internet and intranet systems; Financial services, namely, investment fund transfer and transaction services; Financial services, namely, providing for the exchange of foreign currency, commodities, financial derivatives, interest rate products, and equities via the internet and intranet systems; Financial trust operations; Banking; On-line banking services</p>		

U.S. Registration No.	3481476	Application Date	03/15/2007
Registration Date	08/05/2008	Foreign Priority Date	NONE
Word Mark	BBH INFOFX		

Design Mark	BBH INFOFX
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2007/10/00 First Use In Commerce: 2007/10/00 Financial records management

U.S. Registration No.	2515357	Application Date	05/15/2001
Registration Date	12/04/2001	Foreign Priority Date	NONE
Word Mark	BBH COMSET PLUS		
Design Mark	BBH COMSET PLUS 		
Description of Mark	The mark consists of BBH COMSET PLUS INBLACK LETTERS ACCOMPANIED BY A SUPERSCRIPT RED CHEVRON OR FLAG DESIGN ELEMENT APPEARING IMMEDIATELY FOLLOWING THE TERM "PLUS".		
Goods/Services	Class 036. First use: First Use: 2001/02/28 First Use In Commerce: 2001/02/28 Mutual fund brokerage services; mutual fund investment services; investment management services; investment consultation services; investment advisory services; banking services; custody services relating to financial assets		

U.S. Registration No.	2585041	Application Date	05/15/2001
Registration Date	06/25/2002	Foreign Priority Date	NONE
Word Mark	BBH COMSET PLUS		
Design Mark	BBH COMSET PLUS		
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2001/02/28 First Use In Commerce: 2001/02/28 Mutual fund brokerage services; mutual fund investment services; investment management services; investment consultation services; investment advisory services; banking services; custody services relating to financial assets		

U.S. Registration No.	2520159	Application Date	05/15/2001
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Registration Date	12/18/2001	Foreign Priority Date	NONE
Word Mark	BBH COMSET		
Design Mark	BBH COMSET		
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2000/08/16 First Use In Commerce: 2000/08/16 Mutual fund brokerage services; mutual fund investment services; investment management services; investment consultation services; investment advisory services; banking services; custody services relating to financial assets		

U.S. Registration No.	2628823	Application Date	02/10/2000
Registration Date	10/01/2002	Foreign Priority Date	NONE
Word Mark	BBHCONNECT		
Design Mark	BBHConnect		
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1998/10/00 First Use In Commerce: 1998/10/00 FINANCIAL SERVICES OFFERED VIA A GLOBALCOMPUTER NETWORK FOR EXECUTING FINANCIAL TRANSACTIONS AND STOCK TRADES		

U.S. Registration No.	1492559	Application Date	07/13/1987
Registration Date	06/14/1988	Foreign Priority Date	NONE
Word Mark	BBH & CO.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1958/05/10 First Use In Commerce: 1958/05/10 BANKING SERVICES		

U.S. Registration No.	1575488	Application Date	01/23/1989
Registration Date	01/02/1990	Foreign Priority Date	NONE
Word Mark	BBH & CO.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1931/01/02 First Use In Commerce: 1931/01/02 BANKING SERVICES		

U.S. Registration No.	1561346	Application Date	01/23/1989
Registration Date	10/17/1989	Foreign Priority Date	NONE
Word Mark	BBH & CO.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1931/01/02 First Use In Commerce: 1931/01/02 BANKING SERVICES		

Attachments	77657894#TMSN.png(bytes) 77589814#TMSN.png(bytes) 77584243#TMSN.png(bytes) 77238602#TMSN.png(bytes) 77132361#TMSN.png(bytes) 76257657#TMSN.png(bytes) 76257658#TMSN.png(bytes) 76257656#TMSN.png(bytes) 75914764#TMSN.png(bytes) 73775589#TMSN.png(bytes) 73775653#TMSN.png(bytes) Notice of Opposition bbh black beverly hills.pdf(341960 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Allen J Baden/
Name	Brown Brothers Harriman & Co.
Date	10/01/2014

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

In re Application of: Robert Berry dba Black Beverley Hills

Serial No.: 86160577

Filed: January 8, 2014

For the Mark: BBH in International Class 25

Date of Publication: June 3, 2014
Page TM 882

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

NOTICE OF OPPOSITION

Brown Brothers Harriman & Co., a limited partnership organized under the laws of New York having its principal place of business at 140 Broadway, New York, New York 10005 ("Opposer"), believing that it will be damaged by registration of the alleged "BBH" word mark claimed in U.S. Trademark Application Serial No. 86160577 (the "Challenged Application"), hereby opposes the same.

As grounds for its opposition, Opposer alleges as follows, with knowledge concerning its own acts, and on information and belief as to all other matters:

1. Applicant, Robert Berry, having an address at 4401 West Slauson Avenue, Los Angeles, California 90043 ("Applicant"), owns and is the applicant of record of the Challenged Application.
2. By the application herein opposed, Applicant is seeking to obtain registration for "BBH" for the following goods in International Class 25: Clothing, namely, tops, bottoms, shirts, shoes, socks, underwear, sleepwear, sweat shirts, sweat pants, hooded sweat shirts, sweat jackets, sweat shorts, gloves, jackets, hats, head wear, and pants.
3. Opposer attaches a copy of page TM 882 from the Official Gazette of June 3, 2014, in which the U.S. Patent and Trademark Office published this application, as Exhibit A to this paper.
4. The Applicant filed for the instant application under Section 1A of the Trademark Act on January 8, 2014.
5. Opposer, Brown Brothers Harriman & Co., which commonly refers to itself and is known as "BBH," and operates the website <bbh.com>, is the oldest and largest partnership bank in the United States. Opposer operates in six domestic and eight overseas locations with approximately 4,000 employees. In addition to providing commercial banking services, Opposer is among the leading providers of global custody, fund administration, transfer agency, foreign exchange, private equity, merger and acquisition services, investment management for individuals and institutions, personal

trust and estate administration and securities brokerage services, and provides a myriad of products, including promotional items, in conjunction with those services.

6. Opposer is the owner of 25 active registrations and 3 pending applications for the BBH mark and variants thereof for a wide variety of goods and services, including the U.S. Registrations identified in the below table. Opposer attaches and makes of record a copy of the electronic record for each of the U.S. Registrations identified below, prepared and issued by the Office showing both the status of and title to the registrations, as Exhibit B to this paper.

Mark	Reg. No.	Recitation of Goods or Services
BBH	3660883	(INT. CL. 42) providing temporary use of non-downloadable financial service software for use in analyzing financial data and generating financial reports
BBH	3594879	(INT. CL. 9) software for banking, trust and investment management, namely, software for asset data management and reporting, foreign exchange services, funds investment and management, investment fund transfers, and brokerage services
BBH	3594867	(INT. CL. 36) banking and investment services; namely, investment management, investment advice, funds investment, investment brokerage, investment consultation and investment of funds for others; financial analysis and investment advisory services, namely, management and brokerage in the fields of stocks, bonds, options, futures and other securities, and the investment of funds of others; financial research services; investment consultation, funds investment, and investment management; financial exchange services, namely, providing financial information in the nature of rates of exchange; financial information processing; financial information provided by electronic means; financial portfolio management; financial risk management; financial services, namely, assisting others with the completion of financial transactions for stocks, bonds, securities and equities; providing information in the fields of foreign currency, commodities, financial derivatives, interest rate products, and equities via the internet and intranet systems; investment fund transfer and transaction services; providing on-line stored value accounts in an electronic environment; investment fund transfer and transaction services; providing for the exchange of foreign currency, commodities, financial derivatives, interest rate products, and equities via the internet and intranet systems; trust and estate administration services, namely, investment management, custody of assets, selection of brokers, collection and valuation of assets, bill paying, recordkeeping and accountings, tax return preparation and filing, income tax planning for trusts, grantors and beneficiaries, review and analysis of will and trust documents; trust company services, namely, institutional trust services, charitable foundation services, client tax services, escrow arrangements, estate planning, financial planning, individual retirement planning, philanthropic planning, retirement trusts, trust and estate administration, donor-advised fund program; wealth management services, namely, alternative investments, asset allocation, risk management for concentrated positions; developing and managing a family of alternative investment funds, investment management services to institutional clients, investment advisory and portfolio management services; banking and advisory services, namely, term loans and revolving lines of credit, acquisition finance, subordinated debt financing, trade letters of credit, standby letters of credit, corporate cash management services, foreign exchange, mergers and acquisitions, advisory, 401k and defined benefit plans, investment management; custody services; equity execution services; equity strategy research services; equity trading services, namely, global custody, accounting, administration, transfer agency, securities lending, performance reporting, financial reporting, compliance, brokerage; providing a suite of fund accounting services, namely, multi-currency portfolio valuation, fund accounting, and reporting services; financial and legal administration services for a comprehensive service suite, namely, fund accounting, financial reporting, expense analysis and payment, assistant treasurer's support, performance measurement, compliance, tax support and regulatory and corporate secretarial assistance, namely, board reporting, regulatory filings and consulting services; consulting and advisory services for both qualified and nonqualified retirement plans; serving as a connectivity point between financial service companies and their external service providers and internal system; providing a hosted communications platform for financial services; institutional fund services, namely, serving as product manager for third party investment funds; serving as a financial advisor to middle market businesses across a broad range of industries with a focus on healthcare services, medical technology, telecommunications and media, and outsourced business services; advisory ...

Mark	Reg. No.	Recitation of Goods or Services
BBH DIRECT	3541186	(INT. CL. 36) financial analysis and consultation; financial clearing houses; financial exchange; financial forecasting; financial information in the nature of rates of exchange; financial information processing; financial information provided by electronic means; financial portfolio management; financial research; financial risk management; financial services, namely, assisting others with the completion of financial transactions for stocks, bonds, securities and equities; financial services, namely, providing information in the fields of foreign currency, commodities, financial derivatives, interest rate products, and equities via the internet and intranet systems; financial services, namely, investment fund transfer and transaction services; financial services, namely, providing for the exchange of foreign currency, commodities, financial derivatives, interest rate products, and equities via the internet and intranet systems; financial trust operations; banking; on-line banking services
BBH INFOFX	3481476	(INT. CL. 35) financial records management
BBH COMSET PLUS	2515357	(INT. CL. 36) mutual fund brokerage services; mutual fund investment services; investment management services; investment consultation services; investment advisory services; banking services; custody services relating to financial assets
BBH COMSET PLUS	2585041	(INT. CL. 36) mutual fund brokerage services; mutual fund investment services; investment management services; investment consultation services; investment advisory services; banking services; custody services relating to financial assets
BBH COMSET	2520159	(INT. CL. 36) mutual fund brokerage services; mutual fund investment services; investment management services; investment consultation services; investment advisory services; banking services; custody services relating to financial assets
BBHCONNECT	2628823	(INT. CL. 36) financial services offered via a global computer network for executing financial transactions and stock trades
BBH & CO.	1492559	(INT. CL. 36) banking services
BBH & CO.	1575488	(INT. CL. 36) banking services
BBH & CO.	1561346	(INT. CL. 36) banking services

7. Opposer also owns broad common law trademark rights in the BBH mark by virtue of its lengthy and continuous use of BBH as a trade name and its provision of goods and services under the BBH mark throughout the United States and around the world.
8. Consumers and the trade use Opposer's BBH mark to identify a myriad of goods and services provided by Opposer, including goods in Classes 25. Many of these goods are related to and provided to the same channels of trade and to the same customers as are many of the goods and services for which applicant now seeks registration of the subject alleged trademark.
9. By virtue of Opposer's efforts and the expenditure of considerable sums for promotional activities, and by virtue of the excellence of its goods and services, Opposer has gained for its BBH mark a most valuable reputation and exceedingly valuable goodwill.
10. The alleged trademark proposed for registration by the Applicant, namely, the letters BBH, is identical and confusingly similar to Opposer's BBH trademark.
11. The alleged mark in the Challenged Application "so resembles a mark registered in the Patent and Trademark Office or a mark previously used in the United States by another and not abandoned,"

namely Opposer's BBH trademark, "as to be likely when applied to the [goods and] services of Applicant, to cause confusion, or to cause mistake, or to deceive."

12. Moreover, the applied for trademark is not a "trademark by which the [goods and] services of the Applicant may be distinguished from the [goods and] services of others," namely the goods and services offered by Opposer under its BBH mark, which Opposer has used since well prior to the filing date of Applicant's application, and Opposer has never abandoned its trademark.
13. If the Applicant were permitted to use and register the BBH mark for its goods, as specified in the application herein opposed, confusion in the trade resulting in damage and injury to the Opposer would be caused and would result by reason of the substantial similarity between Applicant's mark and Opposer's mark.
14. Persons familiar with Opposer's goods and services may well confuse Applicant's goods and services as and for goods and services offered by Opposer. Furthermore, any defect, objection or fault found with Applicant's goods or services marketed under its alleged trademark would necessarily reflect upon and seriously injure the reputation that Opposer has established for the goods and services sold or provided under its trademark.
15. If the USPTO were to grant Applicant a registration for the alleged trademark herein opposed, it would obtain thereby at least the *prima facie* exclusive right to use said mark. Such registration would be inconsistent with Opposer's right to use its trademark BBH to identify the source of and describe Opposer's goods and services.
16. Accordingly, the Board should refuse and deny registration of Applicant's alleged trademark in accordance with Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d).
17. Additionally, Opposer believes that Applicant has not used the BBH Mark on or in connection with all of the goods as claimed in the instant Challenged Application. If true, such act constitutes fraud on the USPTO and another ground upon which registration of the Challenged Application should be denied.
18. WHEREFORE, the Opposer prays that the Trademark Trial and Appeals Board reject application Serial No. 86160577, and that the registration of the mark therein sought for the goods and services therein specified be denied and refused, and that the Board sustain this Opposition.

Please address all future communications regarding this opposition to the following attorney of record for Opposer:

Allen J. Baden
Edge Law Group
236 N Santa Cruz Ave Ste 228
Los Gatos CA 95030-7279
Email: abaden@edgelawgroup.com

Applicant files this Notice of Opposition electronically, pursuant to 37 C.F.R. § 2.1 04(a).

Respectfully submitted,

Dated: October 1, 2014

By: /Allen J. Baden/

Allen J. Baden
Edge Law Group
236 N Santa Cruz Ave Ste 228
Los Gatos CA 95030-7279
Telephone: (408) 827-4461
Email: abaden@edgelawgroup.com

Exhibit A

Except from the Official Gazette

Exhibit B

Printouts from USPTO Website

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Opposition was mailed to:

Robert Berry
4401 West Slauson Avenue
Los Angeles, California 90043

by the following indicated method:

By mailing full, true, and correct copies thereof in a sealed, first-class postage-prepaid envelope deposited with the United States Postal Service at Los Gatos, California, on the date set forth below.

DATED: this 1st day of October 2014.

/Allen J. Baden/

4832-3605-2766, v. 1

EXHIBIT D

REQUESTS FOR PRODUCTION

REQUEST NO. 1. Documents sufficient to identify each item of “Clothing, namely, tops, bottoms, shirts, shoes, socks, underwear, sleepwear, sweat shirts, sweat pants, hooded sweat shirts, sweat jackets, sweat shorts, gloves, jackets, hats, head wear, and pants” sold by Applicant bearing or marketed in packaging imprinted with or otherwise bearing the designation BBH.

RESPONSE:

REQUEST NO. 2. Documents sufficient to identify the date of first use (a) ever and (b) in interstate commerce of the designation BBH for each product identified in Interrogatory No. 1.

RESPONSE:

REQUEST NO. 3. A sample or specimen of each and every package for each and every product ever sold by Applicant on which the designation BBH appears.

RESPONSE:

REQUEST NO. 4. All documents and things relating to the conception, adoption, acquisition and application for registration of the BBH designation.

RESPONSE:

REQUEST NO. 5. Documents and things sufficient to identify Applicant's total expenses for each year for advertising and/or marketing goods bearing or packaged under the BBH mark.

RESPONSE:

REQUEST NO. 6. Documents and things sufficient to identify all events and trade shows at which Applicant has promoted goods bearing or packaged under the BBH mark.

RESPONSE:

REQUEST NO. 7. Representative samples of each magazine, newspaper, trade directory, website, and other publication in which an advertisement for Applicant's goods bearing or packaged under the BBH designation has appeared.

RESPONSE:

REQUEST NO. 8. Documents and things sufficient to identify the geographic areas in which the BBH designation has ever been marketed or used on goods or packaging bearing or otherwise imprinted with the designation.

RESPONSE:

REQUEST NO. 9. Documents and things sufficient to identify the class of customers for goods marketed or sold under the BBH designation.

RESPONSE:

REQUEST NO. 10. All documents and things relating to the identity of each person who distributes goods marketed or sold under the BBH designation.

RESPONSE:

REQUEST NO. 11. Documents and things sufficient to identify the annual dollar sales on a yearly basis for goods marketed or sold under the BBH designation.

RESPONSE:

REQUEST NO. 12. All documents and things relating to discontinued sales or distribution of goods bearing or packaged with the BBH designation.

RESPONSE:

REQUEST NO. 13. Documents and things sufficient to identify any instance where Applicant has licensed or offered to license the BBH designation.

RESPONSE:

REQUEST NO. 14. To the extent not previously produced, a sample of each document, including each advertisement, sign or display of any nature bearing the BBH designation.

RESPONSE:

REQUEST NO. 15. All documents and things that Applicant relied upon or reviewed to answer Opposer's Interrogatories, and all documents and things referenced in Applicant's answers thereto.

RESPONSE:

Edge Law Group

Dated: December 1, 2014

/Allen J. Baden/
Allen J. Baden
236 N Santa Cruz Ave Ste 228
Los Gatos CA 95030-7279

abaden@edgelawgroup.com

Attorneys for Brown Brothers Harriman & Co.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposer's First Set of Requests for Documents and Things was transmitted to the named Applicant by email with service by First Class Mail, postage prepaid, this the 1st day of December 2014, addressed as follows:

Robert Berry
4401 W Slauson Ave.
Los Angeles California 90043
thisisrobchina@gmail.com

/Allen J. Baden/
Allen J. Baden

4831-5110-0448, v. 1

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

In re the Application of: Robert Berry
Serial No.: 86060577
Filed: January 8, 2014
For the Alleged Mark: BBH

Published in the Official Gazette on June 3, 2014,

Brown Brothers Harriman & Co.,)	
)	Opposition No. 91218616
Opposer,)	
)	
v.)	
)	
Robert Berry,)	
)	
Applicant.)	
_____)	

OPPOSER'S FIRST SET OF INTERROGATORIES

Pursuant to Fed. R. Civ. P. 33 and Trademark Rules of Practice 2.116 and 2.120, Brown Brothers Harriman & Co. ("Opposer"), hereby requests that Robert Berry ("Applicant"), answer separately and fully the following interrogatories, in writing and under oath, by serving written responses to the offices of Edge Law Group, 236 N Santa Cruz Ave Ste 228 Los Gatos CA 95030-7279, , or at such other place as agreed to by the parties, within thirty (30) days from the date of service, pursuant to the definitions and instructions set forth below. Each separately numbered or lettered sub-part of each Interrogatory requires a separate answer thereto. These interrogatories are continuing and impose upon Applicant the obligations stated in Fed. R. Civ. P. 26(e).

DEFINITIONS AND INSTRUCTIONS

These interrogatories and the document requests being served concurrently are subject to the definitions and instructions set forth below:

I. DEFINITIONS

1. The terms "Defendant," "Applicant," "Black Beverly Hills," "you" or "your" refer to Robert Berry, his affiliates, agents, subsidiaries, successors-in-interest, predecessors-in-interest, divisions, or any other related company and/or their officers, attorneys, agents, directors, employees, representatives and others acting on behalf of or in privity with Applicant.

2. The terms "Plaintiff," "Opposer" or "Brown Brothers Harriman" refer to Brown Brothers Harriman & Co., or this entity as it is known under any previous or subsequent names.

3. The terms "person" and "persons" refer to and include, but are not limited to, any natural persons; businesses; firms; corporations; partnerships; proprietorships; joint ventures; unincorporated associations; trusts; estates; governments (and agencies thereof); charitable, education, governmental or other non-profit institutions, foundations or other organizations; and any quasi-public entities and any other forms of specifically identifiable legal entities.

4. The term "date" means the exact day, month and year, if ascertainable; if not ascertainable, the closest approximation that can be made by means of relationship to other events, locations or matters.

5. The terms "document" and "documents" have the broadest meaning that can be ascribed to them pursuant to Fed. R. Civ. P. 34, including without limitation, all final forms and all drafts and revisions of any type of written or graphic matter, original or reproduced, and all copies thereof that are different in any way from the original, regardless of whether designated "confidential," "privileged," or otherwise restricted. Without limiting the foregoing, the term "document" includes video tapes; films; audio tapes; computer disks; books; papers; letters; telegrams; memoranda; communications (intra- or intercompany); minutes; notes; schedules; tabulations; vouchers; accounts; statements; affidavits; reports; abstracts; agreements; contracts; diaries; calendars; plans; specifications; drawings; sketches; photostats; photographs; charts; graphs and other similar objects; bank records or statements;

calendars; instruction manual or sheets; logs or log books; newspapers or other clippings; summaries (including any memoranda, minutes, notes, records or summaries of any (a) telephone or intercom conversations or messages, (b) personal conversations or interviews, or (c) meetings or conferences); travel or expense records; electronic data compilations (whether in source or object code, and whether in machine-readable or user-readable format, including back-ups on discs, tapes or networks); and any kind of transcript, transcription or recording of any conversation, discussion or oral presentation of any kind; and any information stored on and reproducible in documentary form from a computer or other electronic information storage device.

6. “Good” or “goods” shall be construed to include a “service” or “services.”

7. “Communication” means the transmittal of information in the form of facts, opinions, ideas, inquiries or otherwise, whether oral or written.

8. The term “concerning” means relating to, referring to, regarding, having any relationship with, pertaining to, evidencing, describing, discussing, depicting or constituting evidence of, in whole or in part, the subject matter of the particular request.

9. The terms “all” and “each” shall be construed as “all and each.”

10. The terms “state,” “state all facts” and “state the factual basis” mean to state all facts discoverable under Fed. R. Civ. P. 26(b) that are known to Applicant. When used in reference to a contention, “state,” “state all facts,” “identify,” “identify all documents,” and “identify all communications,” include all facts, documents and communications negating as well as supporting the contention. When used in reference to a contention, “identify each person” includes persons having knowledge of facts negating as well as supporting the contention.

11. “BBH” means the designation that is the subject of U.S. Trademark Application No. 86160577 filed by Applicant.

12. The “BBH Marks” means the trademarks that are the subject of the U.S. Trademark. Registrations for marks incorporating the mark BBH owned and cited by, relied upon and made part of the record by Opposer in the instant proceeding.

13. Each interrogatory or document request shall be read to be inclusive rather than exclusive. Accordingly, the connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory or document request all responses or documents that otherwise might be construed to be outside of its scope. “Including” means “including without limitation.” The word “all” includes “any” and vice versa. The past tense includes the present tense and the present tense includes the past tense. The use of the singular form of any word includes the plural form and vice versa. The masculine form of any word includes the feminine form and vice versa.

II. INSTRUCTIONS

1. Each person responding to these interrogatories is required to furnish responsive information within that person's personal knowledge or the personal knowledge of its attorneys, agents, representatives or employees.

2. Each person responding to the document requests is required to furnish responsive documents within that person's possession, custody or control or within the possession, custody or control of its attorneys, agents, representatives or employees.

3. Each objection shall be set forth with specificity and shall include a statement of the grounds for the objection.

4. When asked to identify or provide the identity of a person, provide the following information as to each person:

- (a) the full name of the person, including the last known home address and telephone number;

- (b) the present employer of the person, including the address and telephone number of the employer, and present position(s) of the person with the present employer; and
- (c) if different from the above, the employer (including address and telephone number) of and position held by the person at the time of the events discussed in the pertinent interrogatory answer.

5. When asked to identify or provide the identity of a person other than a natural person, set forth the full name or title of the entity and state the address, telephone number, the legal form of such entity, the principal business or activity of such entity, and the identity of that person's chief executive officer.

6. When asked to identify or produce a document or a communication, provide the following information as to each such document or communication:

- (a) the general character, nature, or type of the document or communication (*e.g.*, letter, memorandum, notebook, magnetic tape, oral conversation, contract, *etc.*);
- (b) the date of the document or communication, or if it has no date or the date is uncertain, the approximate date of its preparation or occurrence;
- (c) the title of the document;
- (d) the full names of the author(s) and all addressee(s) and recipient(s) of the document or communication;
- (e) a summary of its subject matter;
- (f) the present location and custodian of the document or communication or any copies thereof; and
- (g) its file number or other identifying mark or code.

7. If any document requested to be identified or produced has been destroyed, provide the following additional information as to each such document:
- (a) the date of destruction;
 - (b) the reason for the destruction;
 - (c) the identification of the person who destroyed the document; and
 - (d) the identification of any person who directed that the document be destroyed.
8. If any of these interrogatories or document requests cannot be answered in full, respond to the extent possible, specifying the reasons for the inability to respond to the remainder of the interrogatory or document request, and state whatever information or knowledge is available concerning the unanswered portion.
9. If any responsive information, communication or document is withheld on the basis of any claim of privilege, describe generally the substance or subject matter of the information, communication or document withheld, state the privilege being relied upon or claimed and the basis for the claim, and identify all persons or entities who have had access to such information, communication or document.
10. Unless otherwise specified in an interrogatory or document request, each interrogatory or document request is not limited to a specific time period.
11. Applicant is to supplement its responses to all discovery requests as required by Fed. R. Civ. P. 26(e).

INTERROGATORIES

1. State all facts concerning Applicant's Application Serial No. 86160577 for "BBH" in connection with "Clothing, namely, tops, bottoms, shirts, shoes, socks, underwear, sleepwear, sweat shirts, sweat pants, hooded sweat shirts, sweat jackets, sweat shorts, gloves, jackets, hats, head wear, and pants" in International Class 25.

2. State all facts concerning Applicant's Affirmative Defense that "Applicant's mark is not confusingly similar to Opposers' alleged marks. The defendants [sic] mark stands for Black Beverly Hills which is trademarked for clothing. Opposers' alleged trademark registration No. 3660883 ("883 Registration") is for financial services. There is no confusion because the goods and services are completely different with no overlap."

3. State all facts concerning Applicant's Affirmative Defense that "The Opposition fails because Opposers [sic] have failed to state a claim upon which relief may be granted."

Edge Law Group

Dated: December 1, 2014

/Allen J. Baden/
Allen J. Baden
236 N Santa Cruz Ave Ste 228
Los Gatos CA 95030-7279

abaden@edgelawgroup.com

Attorneys for Brown Brothers Harriman & Co.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposer's First Set of Interrogatories was transmitted to the named Applicant by email with service by First Class Mail, postage prepaid, this the 1st day of December 2014, addressed as follows:

Robert Berry
4401 W Slauson Ave.
Los Angeles California 90043
thisisrobchina@gmail.com

/Allen J. Baden/
Allen J. Baden

4837-7277-4944, v. 1

EXHIBIT E

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

In re the Application of: Robert Berry
Serial No.: 86060577
Filed: January 8, 2014
For the Alleged Mark: BBH

Published in the Official Gazette on June 3, 2014,

Opposer,)
Brown Brothers Harriman & Co.,

Opposition No. 91218616

)

v.)

)

Applicant. Robert Berry,)

)

)

APPLICANTS DOCUMENTS AND THINGS TO OPPOSER

To: ALLEN BADEN:

REQUESTS FOR PRODUCTION

REQUEST NO. 1. Documents sufficient to identify each item of “Clothing, namely, tops, bottoms, shirts, shoes, socks, underwear, sleepwear, sweat shirts, sweat pants, hooded sweat shirts, sweat jackets, sweat shorts, gloves, jackets, hats, head wear, and pants” sold by Applicant bearing or marketed in packaging imprinted with or otherwise bearing the designation BBH.

RESPONSE: Applicant identifies the following categories of documents, data, and tangible things in its possession, custody, or control that it may use to support its claims or defenses. The documents can be made available for inspection at 4401 W Slauson Ave, Los Angeles CA, 90043 at a mutually convenient time and, if necessary, subject to an appropriate protective order.





REQUEST NO. 2. Documents sufficient to identify the date of first use (a) ever and (b) in interstate commerce of the designation BBH for each product identified in Interrogatory No. 1.

RESPONSE: The first use was when Black Beverly Hills was started.

REQUEST NO. 3. A sample or specimen of each and every package for each and every product ever sold by Applicant on which the designation BBH appears.

RESPONSE: Applicant identifies the following categories of documents, data, and tangible things in its possession, custody, or control that it may use to support its claims or defenses. The documents can be made available for inspection at 4401 W Slauson Ave, Los Angeles CA, 90043 at a mutually convenient time and, if necessary, subject to an appropriate protective order.

REQUEST NO. 4. All documents and things relating to the conception, adoption, acquisition and application for registration of the BBH designation.

RESPONSE: Applicant identifies the following categories of documents, data, and tangible things in its possession, custody, or control that it may use to support its claims or defenses. The documents can be made available for inspection at 4401 W Slauson Ave, Los Angeles CA, 90043 at a mutually convenient time and, if necessary, subject to an appropriate protective order. In my possession is my trademark registration along with drawings of the concept.

REQUEST NO. 5. Documents and things sufficient to identify Applicant's total expenses for each year for advertising and/or marketing goods bearing or packaged under the BBH mark.

RESPONSE: Applicant identifies the following categories of documents, data, and tangible things in its possession, custody, or control that it may use to support its claims or defenses. The documents can be made available for inspection at 4401 W Slauson Ave, Los Angeles CA, 90043 at a mutually convenient time and, if necessary, subject to an appropriate protective order.

REQUEST NO. 6. Documents and things sufficient to identify all events and trade shows at which

Applicant has promoted goods bearing or packaged under the BBH mark.

RESPONSE: Applicant identifies the following categories of documents, data, and tangible things in its possession, custody, or control that it may use to support its claims or defenses. The documents can be made available for inspection at 4401 W Slauson Ave, Los Angeles CA, 90043 at a mutually convenient time and, if necessary, subject to an appropriate protective order. My instagram has promotional items from events like flyers www.instagram.com/doublebh www.instagram.com/blackbeverlyhills



Black Beverly Hills Apparel Presents

The First Community Apparel Line

Black Beverly Hills History

View Park, Ladera Heights, and Baldwin Hills were developed in the 1920's as an upper Middle-Class-Neighborhood. Up Until 1948 African-Americans could not live in the neighborhood. Being unconstitutional The Supreme Court issued an Invalidation of racial restrictive covenants. After the arrival of Black families starting in the mid-1960s, the wealthy neighborhoods were sometimes called the "Golden Ghetto" or the "Black Beverly Hills." Be proud of where you live or want to live. You can now live in Black Beverly Hills and wear it!



\$15.00
Per Shirt
Sales Last Until
The Last Week Of
July

BlackBeverlyHills@gmail.com
Call (323) 383-5243 To Order & For Customs
Men & Women SIZES: S, M, L, XL, XXL - Other sizes & Colors Available Upon Request



REQUEST NO. 7. Representative samples of each magazine, newspaper, trade directory, website, and other publication in which an advertisement for Applicant's goods bearing or packaged under the BBH designation has appeared.

RESPONSE: Applicant identifies the following categories of documents, data, and tangible things in its possession, custody, or control that it may use to support its claims or defenses. The documents can be made available for inspection at 4401 W Slauson Ave, Los Angeles CA, 90043 at a mutually convenient time and, if necessary, subject to an appropriate protective order.



SUMMER 11. Made in Los Angeles. 100% Cotton. These tees feature our BBH logo on black & white shirts inspired by the luxury lifestyle. Our Black Beverly Hills shield logo is also featured on the back of the tee. Limited quantities in other colors.

Please contact us at [323-312-5243](tel:323-312-5243) or BlackBeverlyHills@gmail.com for additional inquiries.

REQUEST NO. 8. Documents and things sufficient to identify the geographic areas in which the BBH designation has ever been marketed or used on goods or packaging bearing or otherwise imprinted with the designation.

RESPONSE: Applicant identifies the following categories of documents, data, and tangible things in its possession, custody, or control that it may use to support its claims or defenses. The documents can be made available for inspection at 4401 W Slauson Ave, Los Angeles CA, 90043 at a mutually convenient time and, if necessary, subject to an appropriate protective order.

REQUEST NO. 9. Documents and things sufficient to identify the class of customers for goods marketed or sold under the BBH designation.

RESPONSE: Applicant identifies the following categories of documents, data, and tangible things in its possession, custody, or control that it may use to support its claims or defenses. The documents can be made available for inspection at 4401 W Slauson Ave, Los Angeles CA, 90043 at a mutually convenient time and, if necessary, subject to an appropriate protective order.

REQUEST NO. 10. All documents and things relating to the identity of each person who distributes goods marketed or sold under the BBH designation.

RESPONSE: Applicant identifies the following categories of documents, data, and tangible things in its possession, custody, or control that it may use to support its claims or defenses. The documents can be made available for inspection at 4401 W Slauson Ave, Los Angeles CA, 90043 at a mutually convenient time and, if necessary, subject to an appropriate protective order.

REQUEST NO. 11. Documents and things sufficient to identify the annual dollar sales on a yearly basis for goods marketed or sold under the BBH designation.

RESPONSE: Applicant identifies the following categories of documents, data, and tangible things in its possession, custody, or control that it may use to support its claims or defenses. The documents can be made available for inspection at 4401 W Slauson Ave, Los Angeles CA, 90043 at a mutually convenient time and, if necessary, subject to an appropriate protective order.

REQUEST NO. 12. All documents and things relating to discontinued sales or distribution of goods bearing or packaged with the BBH designation.

RESPONSE: Applicant identifies the following categories of documents, data, and tangible things in its possession, custody, or control that it may use to support its claims or defenses. The documents can be made available for inspection at 4401 W Slauson Ave, Los Angeles CA, 90043 at a mutually convenient time and, if necessary, subject to an appropriate protective order.

REQUEST NO. 13. Documents and things sufficient to identify any instance where Applicant has licensed or offered to license the BBH designation.

RESPONSE: Applicant has not licensed BBH to anyone.

REQUEST NO. 14. To the extent not previously produced, a sample of each document, including each advertisement, sign or display of any nature bearing the BBH designation.

RESPONSE: Applicant identifies the following categories of documents, data, and tangible things in its possession, custody, or control that it may use to support its claims or defenses. The documents can be made available for inspection at 4401 W Slauson Ave, Los Angeles CA, 90043 at a mutually convenient time and, if necessary, subject to an appropriate protective order.

REQUEST NO. 15. All documents and things that Applicant relied upon or reviewed to answer Opposer's Interrogatories, and all documents and things referenced in Applicant's answers thereto.

RESPONSE: All documents and pictures are enclosed

Black Beverly Hills

Dated: January 2, 2015 /Robert Berry/

Robert Berry

4401 West Slauson Ave.

Los Angeles CA 90043

BlackBeverlyHills@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Applicants First Set of Requests for Documents and Things was transmitted to the named Applicant by email with service by First Class Mail, postage prepaid, this the 2nd day of January 2015, addressed as follows:

Robert Berry

4401 W Slauson Ave.

Los Angeles California 90043

thisisrobchina@gmail.com

/Robert Berry/

Robert Berry

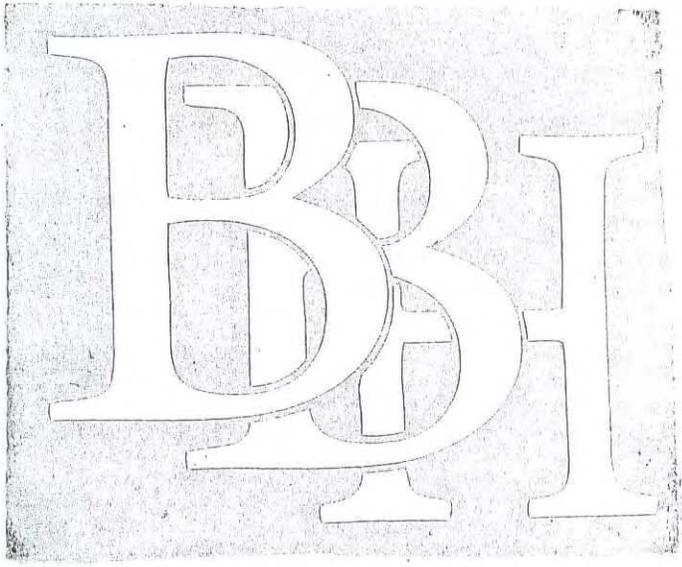






The Official
Black Beverly Hills
 Pool Party
S A T U R D A Y
 3:00 PM August 3, 2013 9:00 PM
Celebrating
ROB CHINA'S
 21+ Event *Birthday*
 Free Entry with BBH attire on before 5pm
 Ladies Free before 5pm
 General Admission: \$20 to Enter
 Catered By Chef Paul Thompson
 4733 Mullen Ave.
 Los Angeles, CA 90043
 Contact/RSVP: (323) 383-5243 or BlackBeverlyHills@gmail.com
www.BlackBH.com | Instagram: [BlackBeverlyHills](https://www.instagram.com/BlackBeverlyHills)
 DESIGNED BY @DJWIZZKIDD





BBH

Black Beverly Hills

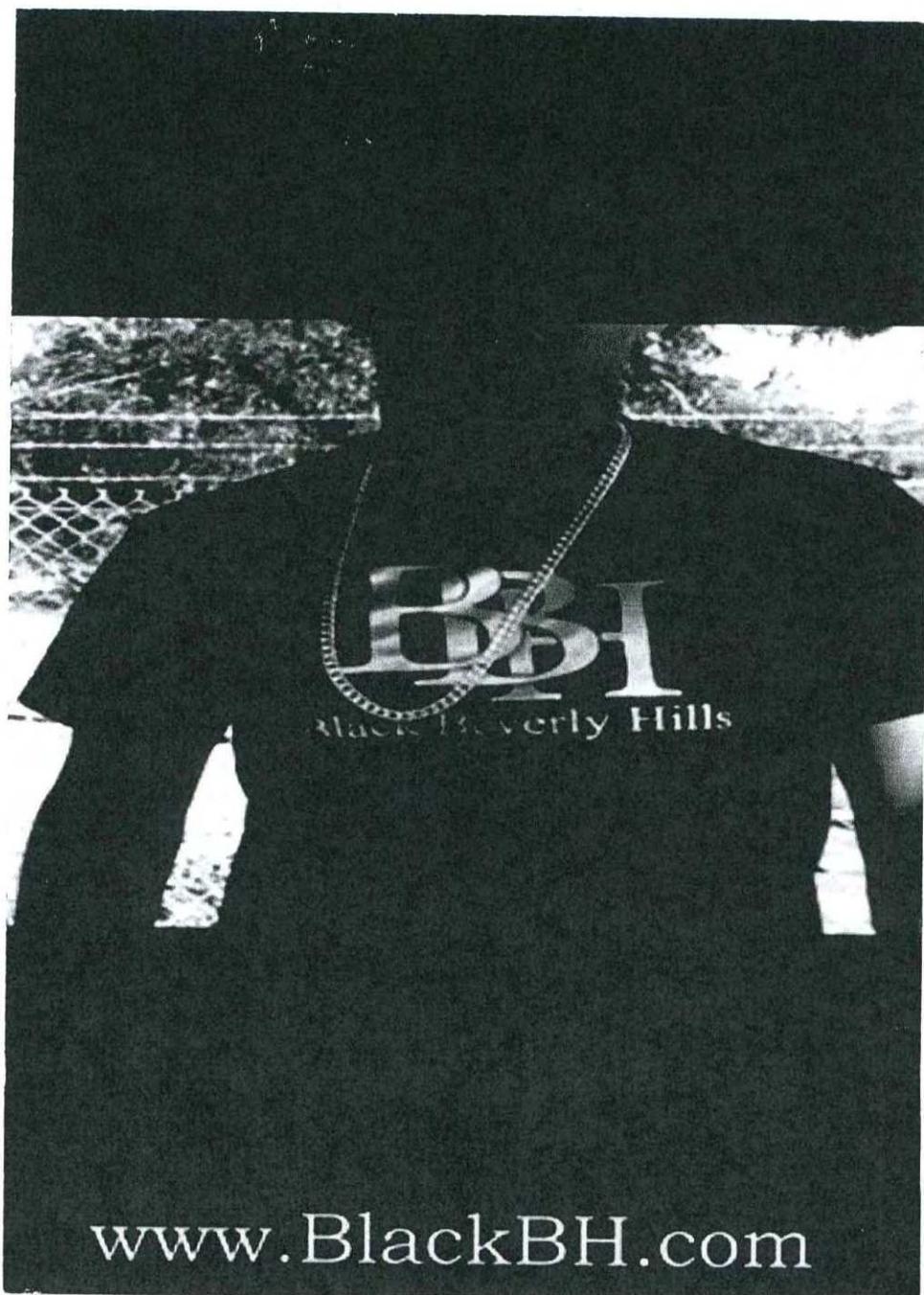
www.BlackBH.com



Instagram:BlackBeverlyHills

BBH

Black Beverly Hills



www.BlackBH.com