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

Proceeding	91219077
Party	Plaintiff Tristar Products, Inc.
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Submission	Motion to Amend Pleading/Amended Pleading
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Attachments	amended notice of opposition.pdf(1550118 bytes )

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

Tristar Products, Inc.	)	
	)	
Opposer,	)	Opposition No. 91219077
	)	
v.	)	Application Serial No.
	)	86/232781
Telebrands Corp.,	)	
	)	
Applicant.	)	
	)	

**AMENDED NOTICE OF OPPOSITION**

On October 28, 2014, Opposer filed a Notice of Opposition. In accordance with TBMP Rule 507.02, Opposer hereby files an Amended Notice of Opposition.

Opposer, Tristar Products, Inc. a corporation organized under the laws of Pennsylvania and located at 492 Route 46 East, Fairfield, NJ 07004, believes that it will be damaged by registration of COPPER HANDS (“Mark”), which Mark is the subject of U.S. Federal Trademark Application Serial No. 86/232781 (“Application”) filed by Telebrands Corp., a New Jersey corporation, having an address at 79 Two Bridges Road, Fairfield, New Jersey 07004 and which Mark was published for opposition in the *Official Gazette* on July 1, 2014. An extension of time was granted by the Trademark Office for Opposer to file an Opposition by October 29, 2014.

The grounds for the opposition are as follows:

**COUNT I - Section 2(d) of the Trademark Act –Likelihood of Confusion**

1. Applicant seeks to register COPPER HANDS for copper-infused compression gloves, in International Class 25.
2. The opposed Application was filed on March 26, 2014 under Section 1(b) of the Trademark Act.
3. Opposer has made substantially extensive and exclusive use of the Mark COPPER WEAR in word form and design form at common law at least as early as August 1, 2013 in connection with clothing, namely, socks, shirts, tights, sleeves, undershorts, shorts, and gloves, all the foregoing goods featuring copper-infused fabric.
4. Since its initial adoption and use, Opposer has made a substantial investment and effort in marketing and promoting its products and services offered under Opposer's COPPER WEAR Mark.
5. As a result of Opposer's substantial investment and effort in marketing and promoting its products and services offered under Opposer's COPPER WEAR Mark, the mark has become strong and well-known within the field of compression clothing.

6. As a result of the widespread use in interstate commerce by Opposer of its COPPER WEAR Mark in connection with clothing, namely, socks, shirts, tights, sleeves, undershorts, shorts, and gloves, all the foregoing goods featuring copper-infused fabric, the Mark has become highly distinctive, has acquired distinctiveness and secondary meaning, and is well known and recognized by the relevant consuming public as identifying high quality goods which have their origin exclusively with Opposer.
7. Opposer registered the domain name [www.copperwear.com](http://www.copperwear.com) on April 27, 2007.
8. Opposer is the owner of U.S. Trademark Application Serial No. 85/826741 for the mark COPPER WEAR for clothing, namely, socks, shirts, tights, sleeves, undershorts, shorts, and gloves, all the foregoing goods featuring copper-infused fabric, in International Class 25. A current printout of information from the electronic database records of the USPTO showing the current status and title of the application accompanies this Notice of Opposition.
9. Opposer filed U.S. Trademark Application Serial No. 85/826741 on January 18, 2013 under Section 1(b) of the Trademark Act.
10. Opposer filed a Statement of Use in U.S. Trademark Application Serial No. 85/826741 on November 12, 2014. In the State of Use, Opposer claims a date of first use of August 1, 2013 and a date of first use in commerce of October 17,

2013.

11. Opposer's filing date of January 18, 2013 is prior to Applicant's filing date of March 26, 2014.
12. Opposer's clothing, namely, socks, shirts, tights, sleeves, undershorts, shorts, and gloves, all the foregoing goods featuring copper-infused fabric in connection with its trademark for COPPER WEAR is highly related and identical to the copper-infused compression gloves identified in Application Serial No. 86/232781 for the mark COPPER HANDS. On information and belief, Opposer's goods and Applicant's goods are offered to the same classes of customers through the same channels of trade.
13. Applicant's Mark, COPPER HANDS, is confusingly similar to Opposer's COPPER WEAR mark, and is likely to cause confusion.
14. Applicant's Mark, COPPER HANDS, is listed in the identical International Class 025 as the Opposer's trademark COPPER WEAR.
15. If Applicant uses the mark COPPER HANDS with the copper-infused compression gloves identified in Application Serial No. 86/232781, such use would be likely to cause confusion, mistake, and/or deception of the relevant trade and public. Customers and potential customers are likely to believe that Applicant's goods offered under the Mark emanate from, or are licensed or

approved by, Opposer, when that is not the case. Such confusion, mistake, and/or deception would be a source of damage to Opposer.

16. If Applicant is granted the registration herein opposed, it would thereby obtain a prima facie right to use the mark COPPER HANDS which is confusingly similar to the Opposer's mark, which would be a further source of damage to Opposer.

17. Applicant's mark, COPPER HANDS, is likely to cause confusion with Opposer's trademark COPPER WEAR based upon a federal registration and/or common law rights, and therefore Applicant's Mark should be refused registration, rendered unenforceable, and/or restricted under Section 2(d) of the Trademark Act.

## **COUNT II – Undisclaimed Portion of the Mark is Merely Descriptive**

18. Opposer hereby incorporates by reference the allegations of paragraphs 1-11 above.

19. Applicant seeks to register COPPER HANDS as a trademark for copper-infused compression gloves.

20. Applicant's mark contains the term HANDS which, when applied to Applicant's gloves, is merely descriptive and should have been disclaimed. See *Kellogg Company v. Pack'em Enterprises, Inc.*, 14 U.S.P.Q.2d 1545.

**WHEREFORE**, Opposer believes that it will be damaged by registration of said Mark, COPPER HANDS, and prays that this Opposition be sustained in favor of Opposer, that Application Serial No. 86/232781 be refused registration, rendered unenforceable, disclaimed in part or whole and/or restricted based upon at the least the grounds set forth above.

The Applicant reserves the right to add additional counts beyond those recited above.

Opposer hereby appoints Barlow, Josephs & Holmes Ltd., a law firm composed of Daniel J. Holmander, Stephen J. Holmes, Cheryl A. Clarkin, David R. Josephs, Robert Lichter, and Joshua A. Stockwell, to act as attorneys for Opposer herein, with full power to prosecute said Opposition, to transact all relevant business with the Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this Opposition.

Respectfully submitted,

Tristar Products, Inc. (Opposer)

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Dated: November 17, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **AMENDED NOTICE OF OPPOSITION** has been served on Applicant's counsel and Applicant, at the following addresses of record, by first class mail, postage prepaid, this 17th day of November 2014:

**Applicant**

TELEBRANDS CORP.  
79 TWO BRIDGES ROAD  
FAIRFIELD, NEW JERSEY 07004

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<b>Word Mark</b>	<b>COPPER WEAR</b>
<b>Goods and Services</b>	IC 025. US 022 039. G & S: clothing, namely, socks, shirts, tights, sleeves, undershorts, shorts, and gloves, all the foregoing goods featuring copper-infused fabric
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s) 26.17.06 - Bands, diagonal; Bars, diagonal; Diagonal line(s), band(s) or bar(s); Lines, diagonal
<b>Serial Number</b>	85826741
<b>Filing Date</b>	January 18, 2013
<b>Current Basis</b>	1B
<b>Original Filing Basis</b>	NO FILING BASIS
<b>Published for Opposition</b>	November 26, 2013
<b>Owner</b>	(APPLICANT) Tristar Products, Inc. CORPORATION PENNSYLVANIA 492 Route 46 East Fairfield NEW JERSEY 07004
<b>Attorney of Record</b>	Daniel J. Holmader
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COPPER WEAR" APART FROM THE MARK AS SHOWN

**Description of Mark** The color(s) copper and grey is/are claimed as a feature of the mark. The mark consists of the wording "COPPER WEAR" in grey, with a copper-colored paintbrush-style stroke at the diagonal between the two words.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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