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Filing date: **05/11/2016**

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

Proceeding	91224533
Party	Plaintiff Simply Southern Fine Arts and Home Decor, LLC
Correspondence Address	WARNER J DELAUNE BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ PC 450 LAUREL STREETCHASE, N TOWER FL 20 BATON ROUGE, LA 70801 UNITED STATES wdelaune@bakerdonelson.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Warner J. Delaune
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Signature	/Warner J. Delaune/
Date	05/11/2016
Attachments	P_motion_for_leave_to_amend_notice_of_opposition.pdf(192241 bytes)

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

SIMPLY SOUTHERN FINE ART AND HOME DÉCOR, LLC)	
)	Opposition No.: 91224533
Opposer,)	
)	Serial No. 86/450,713
v.)	
)	Registration No. 3,335,887
DAZZLE UP, LLC)	
)	
Applicant.)	

MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION

Simply Southern Fine Art and Home Décor, LLC ("Opposer"), by and through undersigned counsel, and pursuant to the Federal Rules of Civil Procedure 15(a)(2) and 37 C.F.R. §2.107(a), hereby moves the Trademark Trial and Appeal Board (the "Board") for leave to amend the Notice of Opposition. Counsel for Applicant has provided its consent to this motion and Opposer's filing of its First Amended Notice of Opposition.

Upon Applicant's filing of its Amended Answer to Notice of Opposition and Counterclaim, Opposer learned of a typographical error in the Notice of Opposition, specifically that Opposer's name was incorrectly identified as "Simply Southern Fine Arts and Home Décor, LLC", wherein the word "Arts" should be "Art". Consequently, Opposer moves to file its First Amended Notice of Opposition which correctly identifies the legal name of Opposer, and to clarify Paragraph 5 regarding Opposer's knowledge or lack thereof with respect to Applicant's use in commerce of the Opposed Mark.

A clean and signed copy of the First Amended Notice of Opposition is attached (Exhibit A), along with a redlined version indicating the changes made from the originally filed Notice of Opposition (Exhibit B).

Therefore, Opposer respectfully requests that its motion for leave to amend the Notice of Opposition be granted, and that Opposer's First Amended Notice of Opposition be entered.

Respectfully submitted,

Dated: May 11, 2016

/Warner J. Delaune/

Warner J. Delaune

Attorney for Opposer,
Simply Southern Fine Art and Home Décor, LLC

BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, P.C.

450 Laurel Street

Chase North Tower, Floor 20

Baton Rouge, LA 70801

(225) 381-7000 (office)

(225) 382-0232 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served on counsel for Applicant, on this 11th day of May, 2016, by sending the same via First Class Mail, postage prepaid, to:

Mr. David Sar
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
P.O. Box 26000
Greensboro, NC 27420

/Warner J. Delaune/

Warner J. Delaune

EXHIBIT A

First Amended Notice of Opposition

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

SIMPLY SOUTHERN FINE ART AND HOME DÉCOR, LLC)	
)	
Opposer,)	
)	
v.)	Opposition No.: 91224533
)	
DAZZLE UP, LLC)	Serial No. 86/450,713
)	
Applicant.)	

FIRST AMENDED NOTICE OF OPPOSITION

Simply Southern Fine Art and Home Décor, LLC, a limited liability company organized and existing under the laws of the State of Louisiana, with a principal place of business located at 70488 Highway 21, Suite 600, Covington, Louisiana (hereinafter "Opposer" or "Simply Southern"), believes that it would be damaged by registration of the SIMPLY SOUTHERN mark shown in U.S. Trademark Application Serial No. 86/450,713 (the "Dazzle Up Application"), by Dazzle Up, LLC (the "Applicant" or "Dazzle Up").

The Dazzle Up Application was filed on November 11, 2014, under Section 1(b) to register the standard character mark SIMPLY SOUTHERN (the "Opposed Mark"), and was published in the Official Gazette on April 28, 2015, for the following goods (as amended on or about March 6, 2015):

- International Class 014 - Costume jewelry

Opposer filed timely requests for extension to oppose, which the Board granted through Sunday, October 25, 2015.

As grounds for this Opposition, Opposer alleges that:

1. Simply Southern Fine Art and Home Décor, LLC ("Opposer"), is a limited liability company formed under the laws of the State of Louisiana.

2. Opposer is the owner of the SIMPLY SOUTHERN name and trademark and U.S. Registration No. 3,335,887, for:

"Retail and computerized online ordering services featuring home furnishings, wall accessories, candles, tableware, housewares, glasswares, floral wreaths, wall shelves, benches, chairs, upholstered furnishings, clocks, wall artwork, primitive notecards, stationery, primitive dolls, wood figurines, pottery, baskets, pillows, rugs, dried florals" in International Class 035.

3. Opposer has used the SIMPLY SOUTHERN mark extensively in connection with jewelry for several years, and prior to the filing date of the Dazzle Up Application.

4. Notwithstanding Opposer's ownership of the SIMPLY SOUTHERN mark for goods in International Class 035, the '887 Registration, and Opposer's prior use in connection with jewelry in the U.S., Applicant filed the Dazzle Up Application on November 11, 2014 (Exhibit A - Dazzle Up Application).

5. On information and belief, Applicant has not used the Opposed Mark in commerce prior to use in commerce by Opposer.

6. Opposer has not granted any trademark rights to Applicant. Applicant is not affiliated with, connected with, endorsed by, or sponsored by Opposer, nor has Opposer

approved any of the goods offered or sold, or intended to be sold, by Applicant under the Opposed Mark.

7. The Opposed Mark wholly and identically incorporates the trademark SIMPLY SOUTHERN, and the Opposed Mark falsely suggests a connection, association, or sponsorship with Opposer.

8. The Opposed Mark, when used in connection with the goods identified in the Dazzle Up Application, is likely to confuse the consuming public to believe that Applicant's goods are authorized, sponsored, licensed or controlled by Opposer, or are in some way related to Opposer.

9. The Opposed Mark falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act, since the Opposed Mark points uniquely at Opposer, and purchasers will assume that goods offered under the Opposed Mark are connected with Opposer.

10. Based upon Opposer's prior use in commerce of the SIMPLY SOUTHERN mark in connection with jewelry, the Opposed Mark, if used and registered, will result in a likelihood of confusion among customers of both Opposer and Applicant, in violation of Section 2(d) of the Trademark Act.

11. If Applicant is permitted to use and register the Opposed Mark for the goods as specified therein, the damage to Opposer's goodwill and reputation will be enormous and irreparable. Such use and registration would dilute the singular, distinctive and unique quality of the SIMPLY SOUTHERN mark in violation of Section 43(c) of the Trademark Act.

WHEREFORE, Opposer prays that, pursuant to Section 13 of the Lanham Act, 15 U.S.C. § 1063, U.S. Trademark Application Serial No. 86/450,713 be denied in its entirety, and that this Opposition be sustained in favor of Opposer.

Respectfully submitted,

Dated: May 11, 2016

/Warner J. Delaune/
Warner J. Delaune

Attorney for Opposer,
Simply Southern Fine Art and Home Décor, LLC

BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, P.C.
450 Laurel Street
Chase North Tower, Floor 20
Baton Rouge, LA 70801

(225) 381-7000 (office)
(225) 382-0232 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FIRST AMENDED NOTICE OF OPPOSITION was served on counsel for Applicant, on this 11th day of May, 2016, by sending the same via First Class Mail, postage prepaid, to:

Mr. David Sar
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
P.O. Box 26000
Greensboro, NC 27420

/Warner J. Delaune/
Warner J. Delaune

EXHIBIT B

First Amended Notice of Opposition
(redlined)

Opposer filed timely requests for extension to oppose, which the Board granted through Sunday, October 25, 2015.

As grounds for this Opposition, Opposer alleges that:

1. Simply Southern Fine ~~Arts~~-Art and Home Décor, LLC ("Opposer"), is a limited liability company formed under the laws of the State of Louisiana.

2. Opposer is the owner of the SIMPLY SOUTHERN name and trademark and U.S. Registration No. 3,335,887, for:

"Retail and computerized online ordering services featuring home furnishings, wall accessories, candles, tableware, housewares, glasswares, floral wreaths, wall shelves, benches, chairs, upholstered furnishings, clocks, wall artwork, primitive notecards, stationery, primitive dolls, wood figurines, pottery, baskets, pillows, rugs, dried florals" in International Class 035.

3. Opposer has used the SIMPLY SOUTHERN mark extensively in connection with jewelry for several years, and prior to the filing date of the Dazzle Up Application.

4. Notwithstanding Opposer's ownership of the SIMPLY SOUTHERN mark for goods in International Class 035, the '887 Registration, and Opposer's prior use in connection with jewelry in the U.S., Applicant filed the Dazzle Up Application on November 11, 2014 (Exhibit A - Dazzle Up Application).

5. On information and belief, Applicant has ~~never~~-not used the Opposed Mark in commerce prior to use in commerce by Opposer.

6. Opposer has not granted any trademark rights to Applicant. Applicant is not affiliated with, connected with, endorsed by, or sponsored by Opposer, nor has Opposer

approved any of the goods offered or sold, or intended to be sold, by Applicant under the Opposed Mark.

7. The Opposed Mark wholly and identically incorporates the trademark SIMPLY SOUTHERN, and the Opposed Mark falsely suggests a connection, association, or sponsorship with Opposer.

8. The Opposed Mark, when used in connection with the goods identified in the Dazzle Up Application, is likely to confuse the consuming public to believe that Applicant's goods are authorized, sponsored, licensed or controlled by Opposer, or are in some way related to Opposer.

9. The Opposed Mark falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act, since the Opposed Mark points uniquely at Opposer, and purchasers will assume that goods offered under the Opposed Mark are connected with Opposer.

10. Based upon Opposer's prior use in commerce of the SIMPLY SOUTHERN mark in connection with jewelry, the Opposed Mark, if used and registered, will result in a likelihood of confusion among customers of both Opposer and Applicant, in violation of Section 2(d) of the Trademark Act.

11. If Applicant is permitted to use and register the Opposed Mark for the goods as specified therein, the damage to Opposer's goodwill and reputation will be enormous and irreparable. Such use and registration would dilute the singular, distinctive and unique quality of the SIMPLY SOUTHERN mark in violation of Section 43(c) of the Trademark Act.

WHEREFORE, Opposer prays that, pursuant to Section 13 of the Lanham Act, 15 U.S.C. § 1063, U.S. Trademark Application Serial No. 86/450,713 be denied in its entirety, and that this Opposition be sustained in favor of Opposer.

Respectfully submitted,

Dated: ~~October 26, 2015~~ May 11, 2016

/Warner J. Delaune/

Warner J. Delaune

Attorney for Opposer,
Simply Southern Fine ~~Arts~~ Art and Home Décor,

LLC

BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, P.C.
450 Laurel Street
Chase North Tower, Floor 20
Baton Rouge, LA 70801

(225) 381-7000 (office)

(225) 382-0232 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FIRST AMENDED NOTICE OF OPPOSITION was served on ~~Applicant and on correspondent counsel~~ for Applicant, on this ~~26th~~ 11th day of ~~October~~ May, ~~2015~~ 2016, by sending the same via First Class Mail, postage prepaid, to:

~~Dazzle Up, LLC~~

~~209 Creek Ridge Rd., Suite E~~

~~Greensboro, NC 27406~~

Mr. David Sar
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
P.O. Box 26000
Greensboro, NC 27420

/Warner J. Delaune/
Warner J. Delaune
