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

Proceeding	91227686
Party	Defendant ICANIWILL AB
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Submission	Answer
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Date	06/13/2016
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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UNDER ARMOUR, INC.,	:	
	:	Opposition
	:	No. 91,227,686
v.	:	
ICANIWILL AB,	:	
	:	Applicant.

----- X

ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION

Applicant, ICANIWILL AB, owner of United States Madrid Protocol Application Serial No. 79/170,719 to register the mark ICANIWILL for clothing, namely, sweatpants; athletic clothing, namely athletic tops and bottoms for runners, yoga, crossfit athletes, gym; thermally insulated clothing, namely, top, bottoms; tops; muffs; headbands; shorts; bottoms; hand warmers as clothing; warm-up suits; weatherproof clothing, namely, rain jackets, rain pants; headgear, namely, headwear; swimming trunks; swim suits; swim wear for gentlemen and ladies; sleeveless jackets; vest tops; sleeveless jerseys; boxer shorts; bikinis; bras; lingerie; chemise tops; women's suits; gloves as clothing; slacks; vests; jackets; socks and stockings; bandanas being neckerchiefs; tee-shirts; leotards; thermal underwear; casual wear, namely, tops, bottoms; panties; shorts and briefs; outer clothing, namely, jackets, coats, vests in International Class 25, for its Answer and Affirmative Defenses to the Notice of Opposition filed by opposer UNDER ARMOUR, INC., pursuant to the order of the Honorable Trademark Trial and Appeal Board filed on April 27, 2016, avers as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Notice of

Opposition.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Notice of Opposition.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Notice of Opposition.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Notice of Opposition.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Notice of Opposition.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Notice of Opposition.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Notice of Opposition.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Notice of Opposition.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Notice of Opposition.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Notice of

Opposition.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Notice of Opposition.

12. Applicant admits the allegations contained in Paragraph 12 of the Notice of Opposition.

13. Applicant admits the allegations contained in Paragraph 13 of the Notice of Opposition.

14. Applicant admits the allegations contained in Paragraph 14 of the Notice of Opposition.

15. Applicant repeats and realleges each and every response to the allegations set forth in each of the preceding paragraphs of the Notice of Opposition.

16. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations contained in Paragraph 17 of the Notice of Opposition.

15. Applicant repeats and realleges each and every response to the allegations set forth in each of the preceding paragraphs of the Notice of Opposition.

19. Applicant denies the allegations contained in Paragraph 19 of the Notice of Opposition.

20. Applicant denies the allegations contained in Paragraph 20 of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE

21. As of April 28, 2016, Opposer's mark I WILL co-exists and/or co-existed on the United States Patent and Trademark Office's Register along with the following:

- a. Lisa Ann Sanford's United States Registration No. 3,900,904 of the mark I CAN! I WILL! I MUST! for clothing, namely, t-shirts in International Class 25.
 - a. This reference was filed on February 26, 2007, alleges use in commerce since at least as early as September 1, 2010 and matured to registration on January 4, 2011.
- b. Forever Loved Entertainment, Inc.'s United States Supplemental Registration No. 3,881,794 of the mark I WILL GRADUATE for clothing, namely, t-shirts in International Class 25.
 - a. This reference was filed on October 23, 2007, alleges use in commerce since at least as early as January 1, 2007 and matured to registration on November 23, 2010.
- c. Jay De Souza's United States Registration No. 4,799,493 of the mark I WILL CUT YOU for clothing, namely, aprons; hooded sweatshirts; smocks; sweaters; sweatshirts; t-shirts; tank tops in International Class 25.
 - a. This reference was filed on January 22, 2015, alleges use in commerce since at least as early as November 1, 2013 and matured to registration on August 25, 2015.
- d. Tommy Speed's United States Registration No. 3,850,852 of the mark I WILL BE REMEMBERED for clothing, namely, fleece pullovers and fleece vests, sweats, namely, sweat pants, sweat shirts, sweaters, hooded sweatshirts, shirts, jerseys, tank-tops, pants, slacks, capris, shorts, short sets, suits, coats, jackets, vests, scarves, silk-scarves, gloves, pajamas, robes, leg, neck and hand warmers, belts, swimwear, folk-costumes and undergarments; footwear, namely, sneakers, shoes, boots, sandals, slippers, socks and tights; headgear, namely, hats, caps, visors and do-rags; women's lingerie; women's, children's, and infants clothing, namely, dresses, skirts and wrap-arounds; infant cloth bibs, cloth diapers and one-piece garments for infants in International Class 25.
 - a. This reference was filed on December 31, 2008, alleges use in commerce since at least as early as July 1, 2010 and matured to registration on September 21, 2010.
- e. JJT / YCYW Publishing, LLC's United States Use Based Application Serial No. 86/733,659 to register the mark YOU CAN & YOU WILL and Design for clothing, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; athletic apparel, namely, shirts, pants,

jackets, footwear, hats and caps, athletic uniforms; athletic shirts; baseball caps and hats in International Class 25.



- a. This reference which was filed on August 22, 2015, alleges use in commerce since at least as early as March 1, 2015 and was issued an Office Action which alleges that the specimen filed as evidence of use is merely ornamental.
- f. Zhang Jiaying's United States Use Based Application Serial No. 86/807,359 to register the mark YOU & WILLING for clothing, namely, beach cover-ups; bodices; brassieres; combinations; drawers; dressing gowns; dressing gowns and bath robes; jerseys; pajamas; sarongs; skirts; slippers; teddies; tights; togas; underpants; underwear; uniforms; vests in International Class 25.
 - a. This reference which was filed on November 3, 2015, alleges use in commerce since at least as early as October 27, 2014 and was published for opposition on April 5, 2016.
- g. Think Positive Clothing, LLC's United States Intent-to-Use Application Serial Nos. 86/880,532 and 86/880,648 to register the mark I WILL BE... for clothing, namely, t-shirts, sweatshirts, jackets and hats in International Class 25.
 - a. These references were filed on January 20, 2016 and have been approved for publication on June 14, 2016.

23. Based upon the fact that the above seven (7) third party filings have been approved to peacefully co-exist on the Register along with Opposer's registrations Applicant respectfully submits that there is no reason to conclude that Opposer's claim to I WILL is famous and/or that ICanIWILL AB's use and registration of its ICANIWILL mark is likely to cause confusion with Opposer's claim to I WILL or otherwise dilute Opposer's claim to I WILL.

24. Moreover, despite Opposer's allegation of ownership of registrations of I WILL covering clothing, Opposer has failed to exercise the requisite exclusive control of its alleged I WILL registrations over any of the many users of the

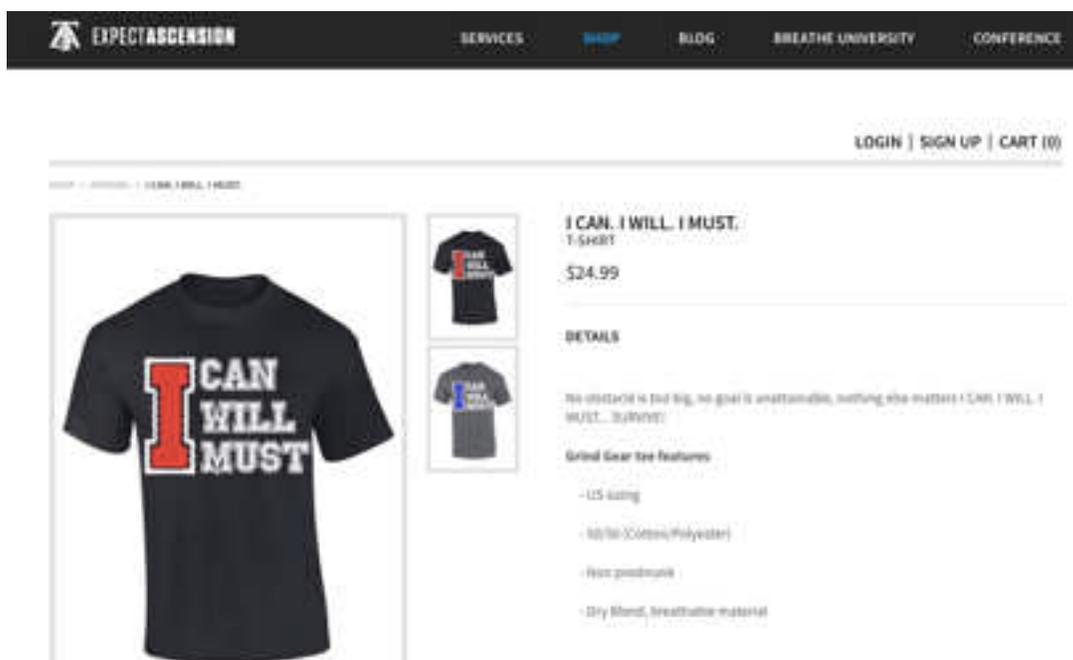
designation I WILL in connection with clothing. According to Applicant's comprehensive search of May 18, 2016, the following third parties are using the designation "I WILL" and/or variations thereof in connection with articles of clothing.

- h. The web section of the report revealed WWE to be using I CAN I WILL on its home website in connection clothing.



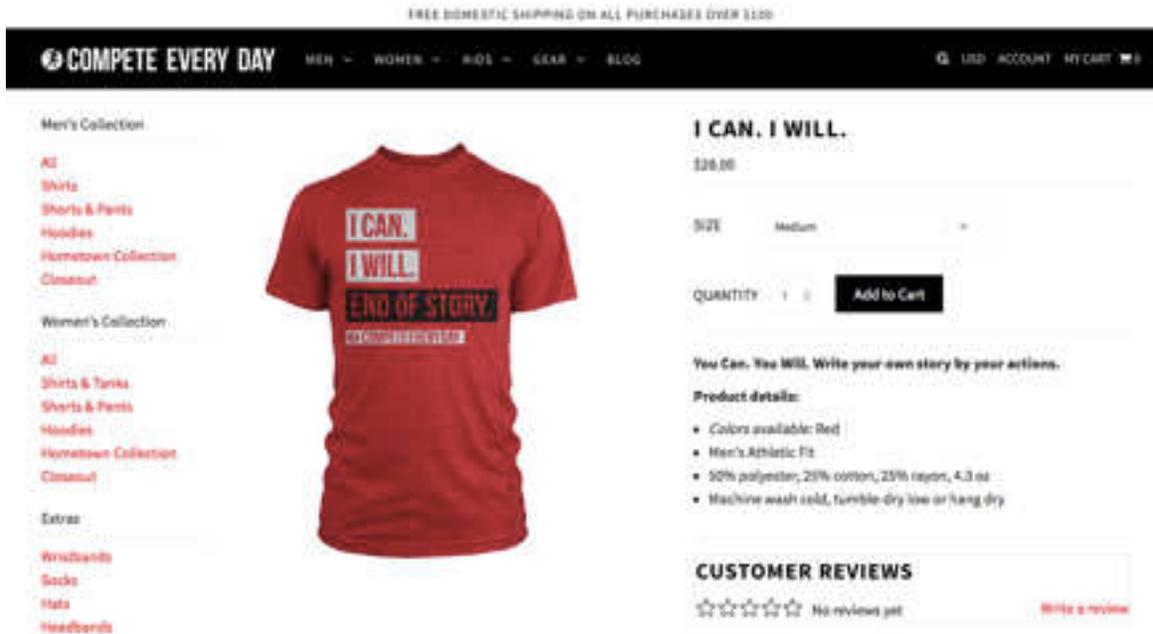
<http://shop.wwe.com/roman-reigns-i-can-i-will-authentic-t-shirt/W09358.html>

- i. The web section of the report revealed Expect Ascension to be using I CAN I WILL I MUST on its home website in connection with clothing.



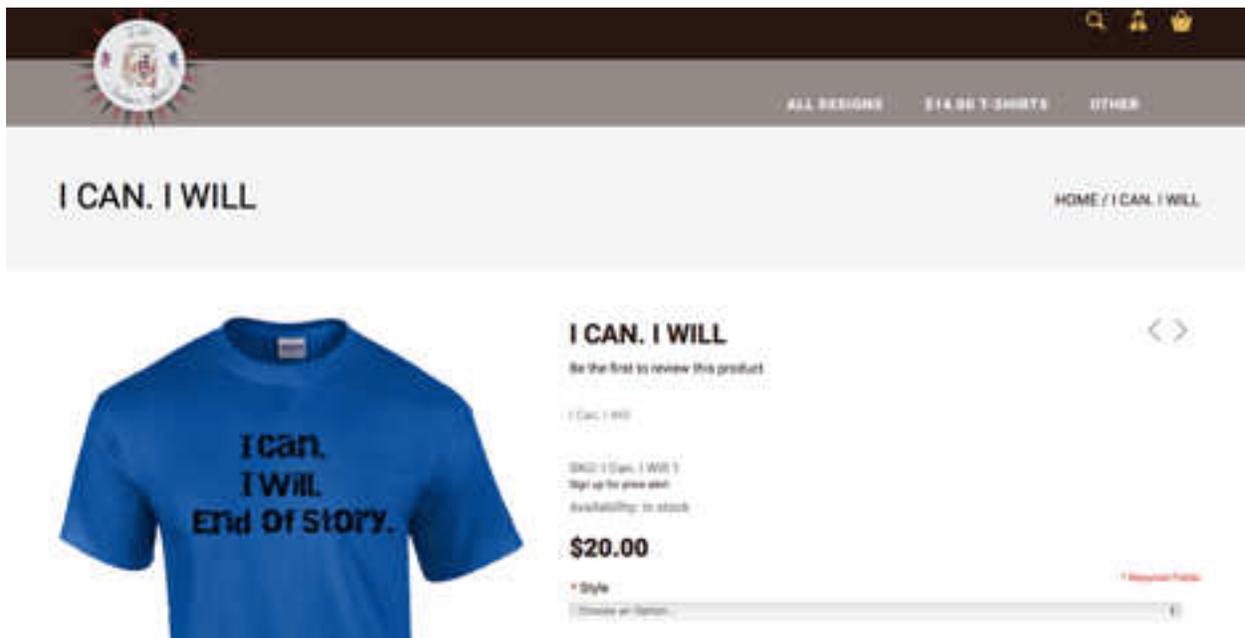
<http://shop.etinspires.com/products/i-can-i-will-i-must>

- j. The web section of the report revealed Compete Every Day to be using I CAN I WILL on its home website in connection with clothing.



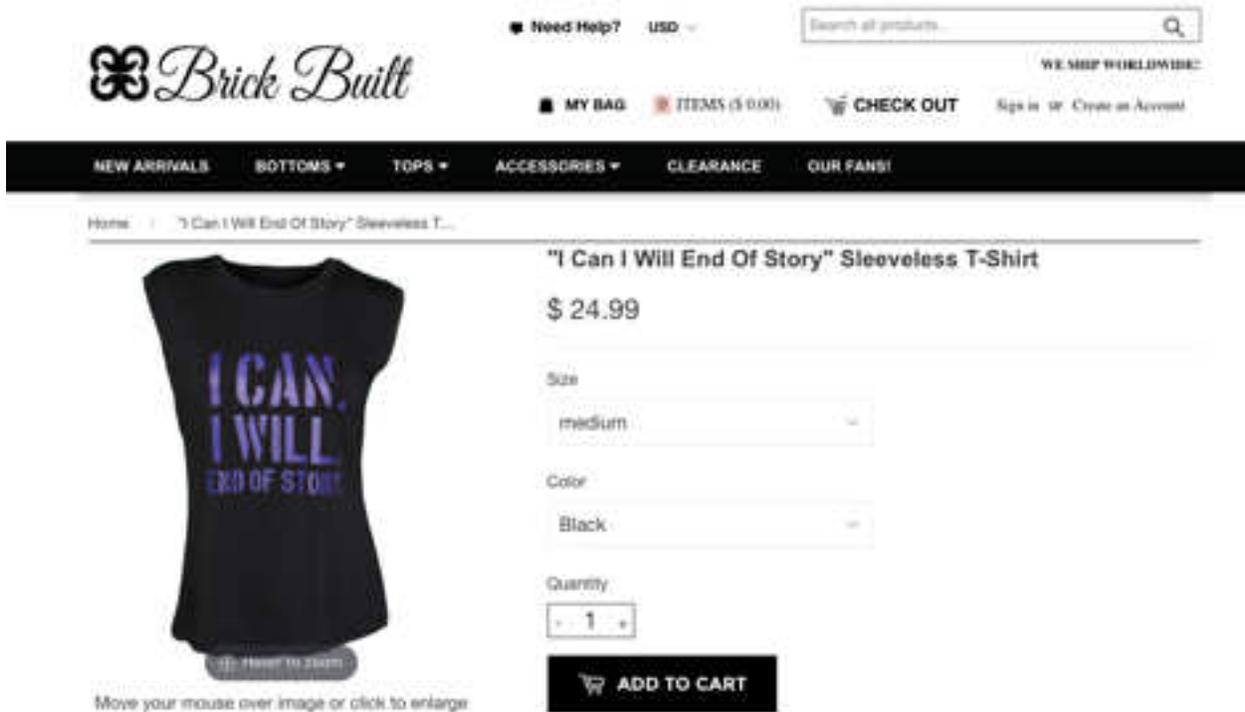
<http://www.competeeveryday.com/products/i-can-i-will>

- k. The web section of the report revealed Elite Custom Apparel to be using I CAN I WILL on its home website in connection with clothing.



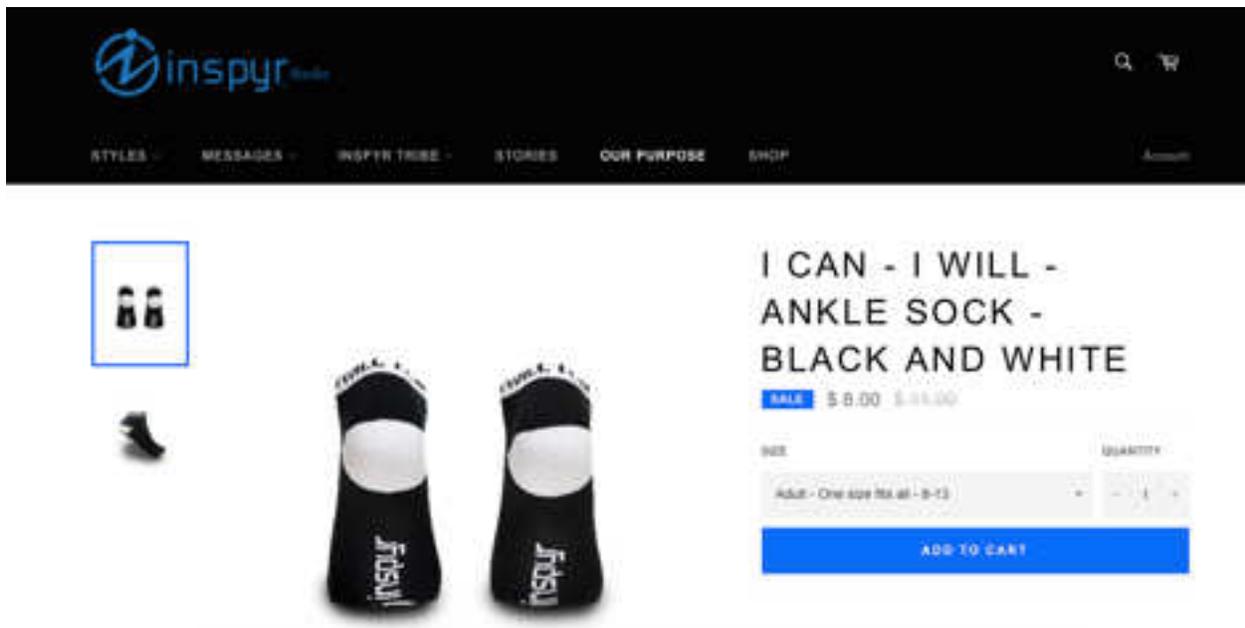
<http://www.elitecustomapparel.com/i-can-i-will.html>

- I. The web section of the report revealed Brick Built to be using I CAN I WILL on its home website in connection with clothing.



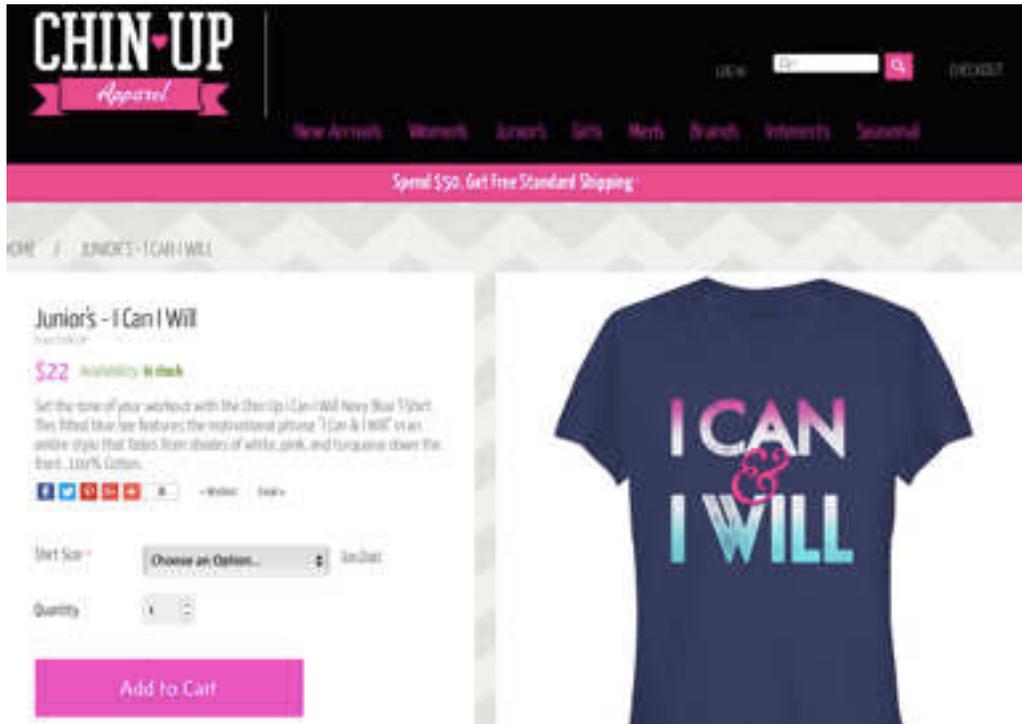
<http://brickbuilt.com/products/i-can-i-will-end-of-story-sleeveless-t-shirt?variant=15119201926>

- m. The web section of the report revealed Inspyr Socks to be using I CAN I WILL on its home website in connection with clothing.



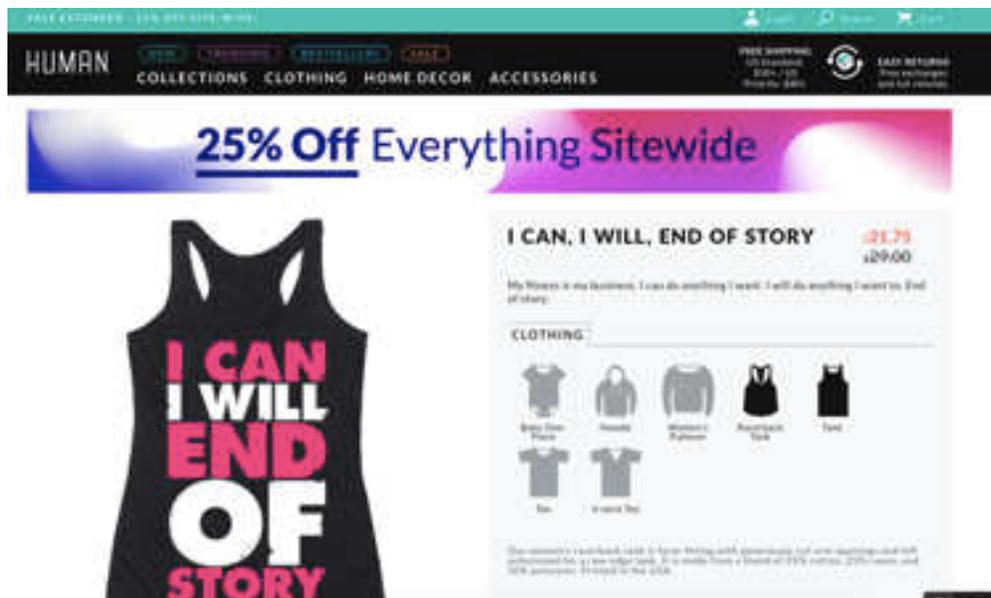
<https://inspyrsocks.com/products/i-can-i-will?variant=1411367937>

- n. The web section of the report revealed Chin Up appears to be using I CAN & I WILL on its home website in connection with clothing.



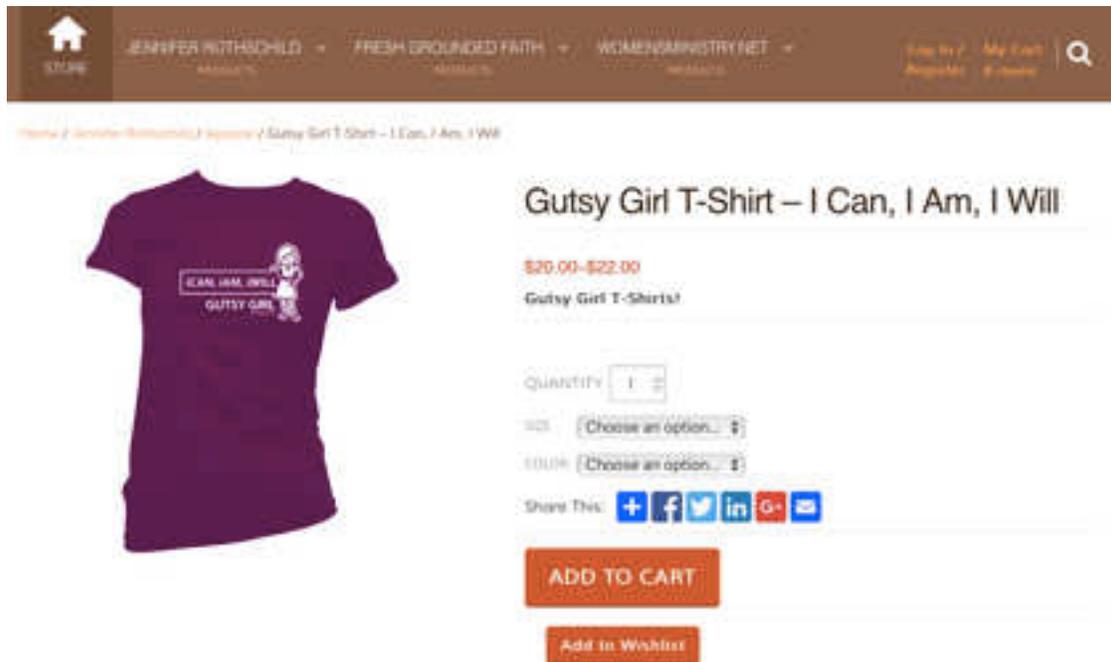
<https://www.chinupapparel.com/juniors-brands-sports-fitness-chin-up-apparel-i-can-i-will-t-shirt>

- o. The web section of the report revealed Human to be using I CAN I WILL END OF STORY on its home website in connection with clothing.



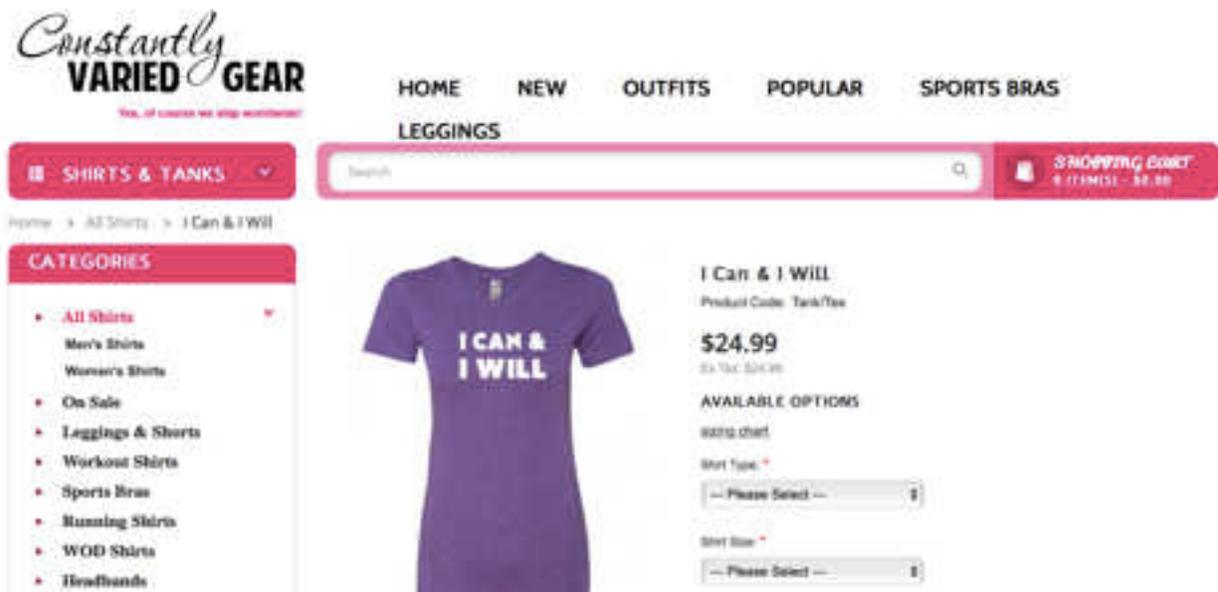
<https://www.lookhuman.com/design/28187-i-can-i-will-end-of-story/racerback>

- p. The web section of the report revealed Jennifer Rothschild to be using I CAN I AM I WILL on its home website in connection with clothing.



<https://www.jenniferrothschild.com/store/product/gutsy-girl-t-shirt-i-can-i-am-i-will/>

- q. The web section of the report revealed Constantly Varied Gear to be using I CAN & I WILL on its home website in connection with clothing.



<https://www.constantlyvariedgear.com/all-shirts/i-can-and-i-will.html>

SECOND AFFIRMATIVE DEFENSE

24. Upon information and belief, Opposer's claim to I WILL is not a strong, famous or well-known mark in the United States and thus is not entitled to "famous trademark" protection in the United States.

THIRD AFFIRMATIVE DEFENSE

25. Opposer's European Community Registration No. 010860741 of the mark I WILL in International Classes 18, 25 and 35, which was filed on May 4, 2012 and matured to registration on October 2, 2012 is peacefully co-existing on the Register along with Applicant's European Community Registration No. 013864616 of the mark ICANIWILL in International Classes 16, 18, 21, 25 and 35, which was filed on March 23, 2015 and matured to registration on July 9, 2015. Printouts obtained from the European Union Intellectual Property Office's home website are respectfully submitted in support of the preceding. Furthermore, Opposer's Swedish counsel had knowledge of Applicant's European Community filing to register ICANIWILL in International Classes 16, 18, 21, 25 and 35 prior to its registration, yet Applicant's European Community application was allowed to mature to registration. In addition, Applicant is unaware of a single instance of confusion taking place involving the subject marks in the European Union to date. Since the identical marks at issue before the Trademark Trial and Appeal Board have more than demonstrated that they are fully capable of peacefully co-existing on the Register in Europe without a single incident of confusion so too should they be capable of doing the same in the United States.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed, that registration be issued to Applicant on its Application Serial No. 79/170,719, and/or that the Board grant to Applicant such other and/or further relief as

the Board may deem just and proper.

Dated: Arlington, Virginia
June 13, 2016

HYNAK & ASSOCIATES, PC

By 
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Hynak & Associates, PC
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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing "Answer and Affirmative Defenses to Notice of Opposition" has been served, via first-class mail, postage prepaid, on Opposer's Attorney, Douglas A. Rettew, of Finnegan, Henderson, Farabow, Garrett & Dunner L.L.P. 901 New York Avenue, N.W., Washington, D.C. 20001-4413 this 13th day of June, 2016.

