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Filing date: **10/05/2016**

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

Proceeding	91229761
Party	Defendant Eagle Phoenix International Investment Limited DBA clothing , fabrics,
Correspondence Address	MICHAEL D STEWART E THE LAW OFFICES OF MICHAEL D STEWART 200 SE 1ST ST, STE 701 MIAMI, FL 33131 UNITED STATES ms@themiamilaw.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Michael D. Stewart
Filer's e-mail	ms@themiamilaw.com
Signature	/Michael D. Stewart/
Date	10/05/2016
Attachments	Motion to dismiss.pdf(253676 bytes)

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

DOUGLAS & GRAHAME LTD.

Opposition No: 91229761
Mark: DOUGLAS & GRAHAME
Serial No: 86820701
Filed: 08/25/2016

V

EAGLE PHOENIX INTERNATIONAL INVESTMENT LIMITED

Applicant

MOTION TO DISMISS

COMES NOW, Applicant, by and through undersigned counsel, and files its Motion to Dismiss the Opposition and in support hereof states:

1. In order to withstand a motion to dismiss for failure to state a claim, the oppose needs to allege such facts as would, if proved, establish that (1) the oppose has standing to maintain the proceeding, and (2) a valid ground exists for opposing the mark. *Young v. AGB Corp.*, 152 F.3d 1377, 47 USPQ2d 1752, 1755 (Fed. Cir. 1998); *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); *see also* TBMP § 503.02. To survive a motion to dismiss, a Notice of Opposition must state a claim to relief that is plausible on its face. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007); *Doyle v. Al Johnson's Swedish Restaurant & Butik Inc.*, 101 USPQ2d 1780, 1782 (TTAB 2012). The Notice of Opposition in this case fails to assert a valid claim for opposing Applicant's mark.

2. Here, Opposer has claimed no valid United States trademark rights, or any rights which would prevent Applicant from using and registering the subject mark.
3. Opposer cites no registration or application for the subject mark and claims no use in the United States.
4. Opposer claims to have adopted the mark in or around 1924 but does not state where it adopted the mark or how the mark has any connection to United State commerce.
5. A complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Doyle, 101 USPQ2d at 1782 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). In particular, the claimant must allege well-pleaded factual matter and more than “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.”. *Iqbal*, 556 U.S. at 678 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).
6. The Opposer has done nothing more here than provide “threadbare recitals of the elements of a cause of action,” and therefore the complaint should be dismissed.

WHEREFORE, Applicant respectfully requests that the complaint be dismissed, together with such further relief as is equitable.

By: /Michael D. Stewart
Michael D. Stewart, Esq.
200 SE 1st St., Suite 701
Miami, Florida 33131
ms@themiamilaw.com
305-590-8909

ELECTRONIC MAILING CERTIFICATE

I hereby certify that the foregoing Motion is being submitted electronically through the Electronic System for the Trademark Trial and Appeal Board (“ESTTA”) and by mail to SMITH GAMBRELL RUSSELL LLP, 1055 THOMAS JEFFERSON ST NW, SUITE 400, WASHINGTON, DC 20007 email to swoldow@sgrlaw.com on this 5th day of October, 2016.

By: /Michael D. Stewart
Michael D. Stewart, Esq.
200 SE 1st St., Suite 701
Miami, Florida 33131
ms@themiamilaw.com
305-590-8909