


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

**IN THE MATTER OF APPLICATION SERIAL NO. 76/523,318
PUBLISHED IN THE OFFICIAL GAZETTE ON FEBRUARY 24, 2004**

PACIFIC SUNWEAR OF CALIFORNIA, INC.,)	OPPOSITION NO. 91159978
)	
)	
OPPOSER,)	
vs.)	ANSWER TO OPPOSER'S NOTICE OF
)	OPPOSITION
PEPPERDINE UNIVERSITY,)	
)	
APPLICANT.)	
)	
)	


05-17-2004
U.S. Patent & TMO/TM Mail Rcpt Dt. #22

Applicant, Pepperdine University ("Applicant"), hereby responds to Opposer Pacific Sunwear of California, Inc.'s ("Opposer") Notice of Opposition as follows:

1. As to the introductory paragraph of the Notice, Applicant admits that it applied to register the mark that is the subject of Application Serial No. 76/523,318, which was published in the Official Gazette on February 24, 2004. Applicant lacks information sufficient to truthfully admit or deny the allegations regarding Opposer's corporate status and business address, and on the basis, denies the allegations regarding the same. Applicant denies that Opposer will be damaged by registration of the mark shown in Application Serial No. 76/523,318 and therefore denies each and every remaining allegation set forth in the introductory paragraph of the Notice.

2. In response to the first paragraph of the Notice of Opposition, Applicant lacks information sufficient to truthfully admit or deny the averments and therefore denies each and every allegation in the first paragraph of the Notice of Opposition.

3. As to the second paragraph of the Notice of Opposition, Applicant lacks information sufficient to truthfully admit or deny the averments and therefore denies each and every allegation in the second paragraph of the Notice of Opposition.

4. As to the third paragraph of the Notice of Opposition, Applicant admits that it filed Application Serial No. 76/523,318 on June 17, 2003 to register its design mark for "clothing, namely, tee-shirts, sweatpants, hats, caps, sweaters, jackets, boxer shorts, socks, tanktops, and shorts" in International Class 25. Applicant denies any remaining allegations set forth in the third paragraph of the Notice of Opposition.

5. As to the fourth paragraph of the Notice of Opposition, Applicant denies each and every allegation set forth in the fourth paragraph of the Notice of Opposition.

6. As to the fifth paragraph of the Notice of Opposition, Applicant denies that its mark comprises matter which falsely suggests a connection with Opposer, is confusingly similar to Opposer's mark, and that its use and registration of its mark is or will damage Opposer. Applicant lacks information sufficient to truthfully admit or deny the remaining allegations set forth in the fifth paragraph of the Notice, and therefore denies each and every allegation set forth in the fifth paragraph of the Notice of Opposition.

AFFIRMATIVE DEFENSES

Applicant, Pepperdine University asserts the following affirmative defenses, reserving the right to modify and expand these affirmative defenses up to and throughout the time of adjudication.

7. Paragraphs 1-6 of Applicant's Answer are hereby incorporated in their entirety to these affirmative defenses by reference.

8. Opposer has failed to state a claim upon which relief can be granted.

9. The Opposition should be dismissed because Opposer has unclean hands.

10. The instant opposition should be dismissed due to laches, estoppel and/or acquiescence.

11. The instant opposition should be dismissed because Opposer has abandoned its Mark.

12. The instant opposition should be dismissed because Opposer's mark is not inherently distinctive, has not acquired secondary meaning and/or is generic.

13. Opposer has filed a Notice of Opposition against Applicant's Serial No. 76/523,318 alleging that Applicant's mark is confusingly similar to Opposer's mark "KIRRA" and design (hereinafter "Opposer's Mark"). Applicant affirmatively alleges that there is no likelihood of confusion, mistake or deception between Applicant's Application Serial No.

76/523,318 and Opposer's pleaded alleged mark, because, *inter alia*, Applicant's mark and Opposer's mark are not confusingly similar.

14. In view of the foregoing, Applicant contends that this opposition is groundless and baseless in fact and that Opposer has not shown in any manner whatsoever wherein it will be, or is likely to be, damaged by the registration of Applicant's trademark, i.e. Opposer has failed to allege grounds sufficient to establish standing and to maintain the Opposition.

WHEREFORE, Applicant prays that:

- (a) The Opposition against U.S. Trademark Application No. 76/523,318 be dismissed in its entirety and that registration issue to Applicant for its mark.

Please apply any charges or credits to Deposit Account No. 03-2030.

Date: May 1st, 2004

Respectfully submitted,



Daniel M. Cislo, Esq.

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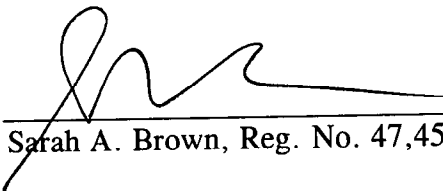
Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that one (1) copy of this document is being deposited with the United States Postal Service as First Class Mail, postage affixed, in an envelope addressed to:

Matthew D. Murphey,
Murphey & Murphey, A.P.C.
Pacific Center One, Suite 260
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Dated: May 10 - 2004

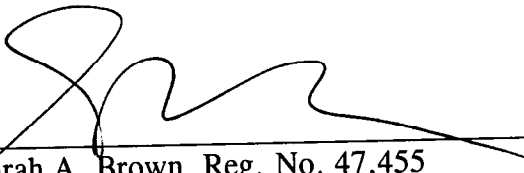
By: 
Sarah A. Brown, Reg. No. 47,455

CERTIFICATE OF MAILING

I hereby certify that the original document is being deposited with the United States Postal Service as first class mail, postage affixed, on the date set forth below in an envelope addressed to:

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2900 Crystal Drive
Arlington, Virginia 22202-3513
ATTN: TTAB

Dated: May 10 - 2004

By: 
Sarah A. Brown, Reg. No. 47,455

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the opposition of:

PACIFIC SUNWEAR OF CALIFORNIA, INC. v. PEPPERDINE UNIVERSITY

Mark: "waves" design mark

Application Serial No.: 76/523,318

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513
ATTN: TTAB

CERTIFICATE OF FIRST CLASS MAILING

Dear Sir/Madam:

Enclosed herewith are the following:

1. Transmittal Letter (1 page);
2. Answer to Opposer's Notice of Opposition (5 pages); and
3. Acknowledgement Postcard.

I hereby certify that this paper or fee is being deposited with the United States Postal Service as first class mail under 37 C.F.R., § 1.8, on the date indicated herein and is addressed to:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513
ATTN: TTAB

Respectfully submitted,

CISLO & THOMAS LLP



Sarah A. Brown
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Date: May 10, 2004

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Enclosures

As listed above

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TTAB

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PROCUREMENT AND ENFORCEMENT
OF INTELLECTUAL PROPERTY

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May 10, 2004

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513
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05-17-2004
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Re: Answer to Opposer's Notice of Opposition
Opposition No. 91159978
Serial No. 76/523,318
Our Docket No. 04-13534

Dear Sir/Madam:

Please find enclosed the Answer to Opposer's Notice of Opposition and a certificate of first class mail for the above referenced matter. Kindly acknowledge receipt thereof by returning the enclosed postcard.

It is our belief that no fees are due at this time, however, any additional fees which may be required may be charged to our deposit account no. 03-2030.

Very truly yours,

CISLO & THOMAS LLP

Daniel M. Cislo

DMC/SAB/sd

Enclosures

- Answer to Opposer's Notice of Opposition
- Certificate of First Class Mail
- Acknowledgement Postcard