

TTAB



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

VENUS SWIMWEAR, INC.,  
Opposer  
  
v.  
  
MONTE CATINI CORP.,  
Applicant.

76654748  
] Opposition No. 91175559  
]  
]  
]  
]  
]

**MOTION TO ENLARGE THE TIME FOR APPLICANT TO**  
**SUBMIT ITS ANSWER TO THE AMENDED NOTICE OF**  
**OPPOSITION AND TO ACCEPT THE LATE-FILED ANSWER**

The undersigned counsel for the Applicant hereby moves the Honorable Board for an Enlargement of the original period to file its Answer to the Amended Notice of Opposition and to accept the Answer submitted herewith.

This Motion is brought under the provisions of TBMP §509.01 and Rule 6(b)(2) of the Fed. Rules Civ. Pro. on the grounds of excusable neglect.

The undersigned attorney for the Applicant received the Amended Notice of Opposition by mail on February 12, 2007 and noted that a responsive pleading was due to be filed by



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March 20, 2007. A Copy of the Notice was submitted promptly by mail to the Applicant. Not having received any response, a follow up facsimile was sent to Applicant.

Late in the afternoon on the last day for filing of the Answer or a Motion for Extension, facsimile instructions were received by counsel to proceed with the filing of an Answer.

Counsel did not see the instructions until today which is one day past the due date for the filing of an Answer.

Attached hereto is an Answer to the Opposition which is being submitted one day past the deadline. It is submitted that the Opposer could in no way be prejudiced by this late filing.

The delay was occasioned by the lack of adequate staff in the offices of the Applicant at the time that the Notice of Opposition was forwarded.


It is believed that the reasons set forth above clearly indicate excusable neglect as well as good faith action by the movant to respond promptly. It is further suggested that this delay will certainly not prejudice the Opposer since the proceedings have just gotten underway and no discovery has, as yet, been propounded. See *Pioneer Investment Services Company v. Brunswick Associates Ltd. Partnership* 507 U.S. 380 (1993)

which has been adopted by the TTAB in *Pumpkin Ltd. v. The Seed Corps.* 43 USPQ2d 1582 (TTAB 1997) which sets forth the basic requirement for a showing of "excusable neglect".

Applicant submits with this Motion its Answer to the Notice and prays that it be accepted.

It should not be necessary to modify the scheduled dates as set forth in the Board's institution order dated February 8, 2007.

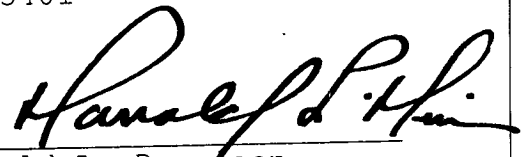
Respectfully submitted,



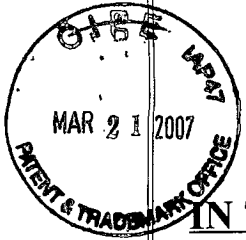
Donald L. Dennison  
Attorney for Respondent  
Dennison, Schultz, and MacDonald  
1727 King Street, Suite 105  
Alexandria, VA 22314  
(703) 837-9600 Ext. 15

### CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion was served by first class mail with proper postage affixed, this 21<sup>st</sup> day of March, 2007 upon counsel for Opposer, Peter A. Chiabotti, Esq. c/o Akerman Senterfitt, 222 Lakeview Avenue, 4<sup>th</sup> Floor, West Palm Beach, FL 33401



Donald L. Dennison



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**ANSWER TO NOTICE OF OPPOSITION**

In Answer to the Notice of Opposition, Applicant, Monte Catini Corp., denies that the Opposer would in any way be damaged by the registration of Applicant's mark here sought to be registered. (Application Serial No. 76/654,748)

With respect to the stated grounds for the Opposition, Applicant responds to each numbered paragraph as follows:

1 Applicant has insufficient information concerning the allegations of Paragraph 1 of the Notice of Opposition to form a belief as to the truth or falsity thereof and therefor denies the same.

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2. Applicant has insufficient information concerning the allegations of Paragraph 2 of the Notice of Opposition to form a belief as to the truth or falsity thereof and therefor denies the same.

3. Applicant admits the existence of the Registrations listed in paragraph 3 of the Notice, but has insufficient information concerning the status and present ownership thereof and therefore requires strict proof thereof.

4. Applicant admits the existence of the Applications listed in paragraph 4 of the Notice, but has insufficient information concerning the status and present ownership thereof and therefore requires strict proof thereof.

5. Applicant has insufficient information concerning the allegations of Paragraph 5 of the Notice of Opposition to form a belief as to the truth or falsity thereof and therefor denies the same.

6. Applicant admits the allegations of Paragraph 6 of the Notice of Opposition.

7. Applicant has insufficient information concerning the allegations of Paragraph 7 of the Notice of Opposition to form a belief as to the truth or falsity thereof and therefor denies the same and additionally, Applicant denies that Opposer has priority of rights in the word "VENUS" as applied to cosmetics. Applicant admits that its application here opposed was based upon an intent-to-use.

8. Applicant denies the allegations of Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations of Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations of Paragraph 10 of the Notice of Opposition.

## AFFIRMATIVE DEFENSES

In further answer to the Notice of Opposition, the Applicant asserts the following Affirmative Defenses:

1. The Opposer has failed to allege grounds sufficient to establish its standing to maintain the present Opposition.
  
2. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark and the pleaded mark of Opposer, when applied to the respective goods of the parties, are not confusingly similar to the consumer since the goods of the parties are vastly different and are marketed in different channels of trade.
  
3. In view of a large number of third party registrations and pending applications that include "VENUS" as part of the marks in Class 3, Opposer has no exclusive rights in this mark sufficient to prevent registration by others of any mark including that word.

Accordingly, Applicant prays that the Notice of Opposition be dismissed and the application of Monte Catini Corp. be permitted to register.

Respectfully submitted,  
MONTE CATINI CORP.

By



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Dennison, Schultz, & Macdonald  
Attorneys for Applicant  
1727 King Street  
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(703)837-9600 Ext. 15

March 21, 2007

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Answer and Motion to Enlarge the Time for Filing were sent by first class mail with proper postage affixed, this 21<sup>ST</sup> day of March, 2007, to counsel for Opposer, Peter A. Chiabotti, Esq., c/o Akerman Senterfitt, 222 Lakeview Avenue, 4<sup>th</sup> Floor, West Palm Beach, FL 33401



Donald L. Dennison