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

Proceeding	91177785
Party	Plaintiff Seattle Pacific Industries, Inc.
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	02/26/2008
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SEATTLE PACIFIC INDUSTRIES, INC.,)	Opposition No. 91/177785
)	
Opposer,)	Serial No. 77/002855
)	
v.)	
)	
MICHAEL SAFRIN,)	
)	
Applicant.)	Docket No. 920006.80010
)	

**OPPOSER’S MOTION TO AMEND THE
NOTICE OF OPPOSITION**

Seattle Pacific Industries, Inc. (“Opposer”) hereby moves for leave to amend its Notice of Opposition to add as an additional ground for opposition to application.

This motion is based on the pleadings filed in this action and on the supporting Declaration of Kevin S. Costanza (“Costanza Declaration”) submitted herewith.

A proposed Amended Notice of Opposition, to which paragraph 14 has been added to assert an additional ground for opposition, and a Motion for Summary Judgment are also submitted herewith.

Opposer requests leave to assert as an additional ground for opposition Applicant’s lack of a bona-fide intent to use the applied-for mark in commerce for the described goods at the time Applicant filed his intent-to-use application, rendering the application *void ab initio*.

Opposer first learned of the factual basis for this additional ground on February 4, 2008, upon receipt of Applicant’s responses to Opposer’s interrogatories and requests for production. Opposer’s discovery sought, *inter alia*, facts and documents including written business plans concerning Applicant’s intended use of the mark shown in the application. (Costanza Decl., ¶ 2, Exhs. 1 & 2) In response to Opposer’s discovery responses, Applicant indicated that he had never used the mark and that there were no written business plans or other documents showing

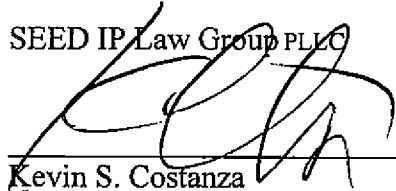
his plans to use the mark. (Costanza Decl., ¶ 3 , Exhs. 3 & 4) Applicant produced 5 handwritten sketches of what appear to be various logos and designs incorporating Applicant's mark, but did not produce any other documents relating to the mark or any plans to use the mark. (Costanza Decl., ¶ 4, Exhs. 5 & 6)

Fed. R. Civ. P. 15(a) provides that leave to amend pleadings shall be freely given when justice so requires. As stated by the Board in *Boral Ltd. v. FMC Corp.*, 59 U.S.P.Q.2d 1701, 1702 (TTAB 2000), "Consistent therewith, the Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the parties." See also TBMP §507.02(a). Applicant will not be prejudiced by the filing of this motion, which, together with the accompanying motion for summary judgment, is being timely filed prior to the opening of Opposer's testimony period. *Focus 21 International v. Pola Kasei Kogyo Kabushiki Kaisha*, 22 U.S.P.Q.2d 1316, 1318 (TTAB 1992) (no prejudice to opposing party where petitioner's motion to amend the petition to cancel was filed prior to the opening of petitioner's testimony period).

Moreover, Opposer's admission requests and other discovery requests provided Applicant with notice that Applicant's use of and rights in the applied-for mark were at issue in this proceeding. Accordingly, Opposer respectfully requests leave of the Board to file the proposed Amended Notice of Opposition submitted concurrently with its motion.

DATED this 26th day of February, 2008.

SEED IP Law Group PLLC



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Seattle, Washington 98104
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Attorneys for Opposer
SEATTLE PACIFIC INDUSTRIES, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February, 2008, the foregoing **OPPOSER'S MOTION TO AMEND THE NOTICE OF OPPOSITION** was served upon Applicant by United States first-class mail, postage-prepaid, addressed as follows:

Daniel S. Polley, Esq.
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Annette Baca

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)	

AMENDED NOTICE OF OPPOSITION

Opposer Seattle Pacific Industries, Inc. (“Opposer”), which has a principal place of business in Seattle, Washington, believes that it would be damaged by registration of the mark SKATE UNION shown in United States Trademark Application Serial No. 77/002855 filed by Michael Safrin (“Applicant”), and published for opposition on May 15, 2007. Therefore, Opposer opposes that application.

The grounds for this opposition are as follows:

1. Opposer Seattle Pacific Industries, Inc. is a corporation organized under the laws of the State of Washington with an address at 1633 Westlake Avenue North, Seattle, Washington 98109.
2. Opposer is engaged in the sale and marketing of a variety of men’s, women’s, and children’s apparel and related products.
3. Since as early as November, 2001, prior to the September 19, 2006 filing date of Applicant’s intent-to-use application, Opposer, through its predecessor and licensee, has continuously engaged in the sale in commerce of clothing and related accessories under the mark UNION. Opposer has also begun selling and continues to sell clothing products under the marks UNION & Design and U UNION & Design.

4. Opposer is the owner of U.S. Trademark Registration No. 2,927,728 for the word mark UNION in International Class 25 for clothing, namely, jackets, raincoats, sweatshirts, jerseys, shirts, blouses, pants, tights, shorts, hats, caps, sweatbands, headbands, gloves belts, shoes, boots, and socks. The registration is valid and subsisting.

5. Opposer is the owner of U.S. Trademark Registration No. 3,076,424 for its UNION & Design mark in International Class 25 for clothing, namely, jackets, shirts, tops, pants, shorts, jeans, and bottoms. The registration is valid and subsisting.

6. Opposer is the owner of U.S. Trademark Registration No. 3,082,240 for its U UNION & Design mark in International Class 25 for clothing, namely, jackets, shirts, sweatshirts, tops, pants, jeans, shorts, and bottoms. The registration is valid and subsisting.

7. Opposer's UNION, UNION & Design, and U UNION & Design marks (hereafter referred to as Opposer's "UNION Marks") symbolize extensive good will and consumer recognition developed by Opposer through sales of goods under the marks and through advertising, promoting and popularizing of the marks in the United States.

8. As a result of such use and advertising of Opposer's UNION Marks, the marks are recognized as identifying the high-quality goods sold under the marks. The marks and the associated goodwill are valuable assets of Opposer.

9. The mark SKATE UNION shown in Applicant's application mark incorporates Opposer's UNION word mark in its entirety.

10. Applicant has applied to register the SKATE UNION mark in International Class 25 for wearing apparel and clothing, namely, hats, t-shirts, shirts, shorts, pants, sweat shirts, shoes and coats. The goods described in Applicant's application are substantially identical to the goods on which Opposer's UNION Marks are used.

11. The goods described in Applicant's application to register SKATE UNION are so closely related to the goods described in Opposer's registrations for its UNION Marks that if the parties' respective products are sold under the same or confusingly similar marks, a likelihood of confusion will result.

12. Applicant's SKATE UNION mark for the goods described in the application is confusingly and deceptively similar to Opposer's UNION Marks for the goods described in Opposer's registrations, such that the trade and purchasing public will be confused and deceived by believing that Applicant's goods originate with or are otherwise authorized, sponsored, licensed or associated with Opposer.

13. On information and belief, Applicant has had no use of Applicant's Mark in commerce prior to the September 19, 2006 filing date of Applicant's intent-to-use application.

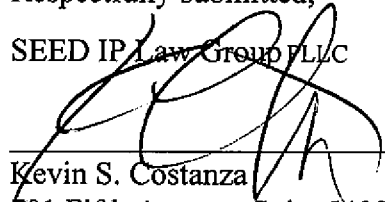
14. On information and belief, Applicant did not have a bona-fide intent to use the mark in commerce at the time of filing his application under Section 1(b) and Applicant's application is therefore *void ab initio*.

15. By reason of all of the foregoing, Opposer would be greatly damaged by the grant to Applicant of a registration for SKATE UNION for the goods described in the application.

WHEREFORE, Opposer prays that this Opposition be sustained and the mark refused registration.

DATED this 26th day of February, 2008.

Respectfully submitted,
SEED IP Law Group PLLC



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Attorneys for Opposer
SEATTLE PACIFIC INDUSTRIES, INC.

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