ESTTA Tracking number: **ESTTA174308**

Filing date: **11/13/2007**

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

Proceeding	91179819
Party	Defendant Richter International Ltd.
Correspondence Address	A. YATES DOWELL, III DOWELL & DOWELL, P.C. SUITE 406 2111 EISENHOWER AVENUE ALEXANDRIA, VA 22314 yates@dowellpc.com
Submission	Answer
Filer's Name	Ronald A DiCerbo
Filer's e-mail	rdicerbo@mcandrews-ip.com
Signature	/Ronald A DiCerbo/
Date	11/13/2007
Attachments	Answer.pdf (9 pages)(400913 bytes)

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

In the Matter of Application Serial No. 76/661,116
Filed: June 2, 2006
For the Mark: TUZZI
Published in the Official Gazette: June 5, 2007

LOCAT S.p.A and FUZZI S.p.A	)	
	)	
Opposers,	)	
	)	
v.	)	Opposition No. 91179819
	)	
RICHTER INTERNATIONAL LTD.	)	
	)	
Applicant.	)	

ANSWER TO NOTICE OF OPPOSITION

In the above-referenced Opposition to Serial No. 76/661,116 for the mark TUZZI, Applicant hereby answers the allegations in the Notice of Opposition as follows:

1. Opposer, Locat S.p.A. is an Italian corporation with an address of Piazza di Porta Santo Stefano 3, Bologna Italy.

ANSWER: Applicant is without sufficient information to form a belief as to the allegations in Paragraph 1, and therefore denies same.

2. Opposer, Fuzzi S.p.A. is an Italian company with an address of address of Via al Mare No. 1015, San Giovanni in Marignano (RN), 47842 Italy.

ANSWER: Applicant is without sufficient information to form a belief as to the allegations in Paragraph 2, and therefore denies same.

3. Applicant Richter International Ltd. is a corporation duly organized and existing under the laws of the country of Canada, with offices at 22 Howden Road, Scarborough, Ontario M1R 3E4.

ANSWER: Admitted.

4. Fuzzi is the original owner of the following U.S. trademark registrations:

a. Registration No. 2,489,920 for FUZZI, registered on September 18, 2001, for "perfumes; essential oils and soaps for personal use; balsams; dyes for hair; toothpastes; creams for the face and the body; lipsticks and rouges; nail varnishes; eye shadows; bubble baths and bath foams; shave creams and shave foams; cosmetics, namely, body lotions, hair shampoos, hair sprays, hair setting lotions, self-tanning lotions, sun creams and oils for the skin" in International Class 3; "spectacles; sunglasses; eyeglasses; eyeglass frames; eyeglass lenses; eyeglass cases and eyeglass boxes; chains for spectacles; contact lenses" in International Class 9; "carry-on bags; men's shoulder bags; purses; wallets; suitcases; luggage; luggage trunks; handbags and travel bags; umbrellas; cosmetic bags sold empty; and backpacks" in International Class 18; "fabrics, namely polyester, nylon, and rayon; towels; bed sheets; table cloths; bed blankets; and table linen and fabric table runners" in International Class 24; and "hats; scarves, neckerchiefs; gloves; caps; stockings and socks; track suits and wind-cheaters; trousers; skirts, shirts; jackets; sport jackets; blazers; overcoats; raincoats; panty hose; pullovers; bathing suits and shorts; beach robes; beach dresses; shoes; boots; sandals; clogs; sports and gymnastic shoes;

slippers; clothing belts; pareos, or patterned skirts; salopettes, namely, protective trousers for sports made of heat and cold resistant material and padded to be resistant to shock, vibration, and impact; clothing caps; and knit shirts" in International Class 25; and

b. Registration No. 1,576,445 for FUZZI, registered on January 9, 1990 for "knitted coats, sweaters and jackets, skirts, trouser, and shirts" in International Class 25 (Registration Nos. 2,489,920 and 1,576,445, collectively, "the Registered Mark" and the goods included therein, collectively "the Registered Goods").

ANSWER: Applicant admits that there appears to be a Registration No. 2,489,920 as generally described in Paragraph 4.a. Applicant denies that Registration No. 2,489,920 includes all of the goods listed in Paragraph 4.a. Applicant admits that there appears to be a Registration No. 1,576,445 as described in Paragraph 4.b. Applicant is without sufficient information to form a belief as to the remaining allegations in Paragraph 4, and therefore denies same.

5. Locat is the current owner of the Registered Mark by way of assignment dated December 29, 2006, and recorded in the U.S.P.T.O. on April 4, 2007, at reel/frame 3514/0683 on page 23.

ANSWER: Applicant is without sufficient information to form a belief as to the allegations in Paragraph 5, and therefore denies same.

6. Fuzzi has an exclusive license from Locat for the Registered Mark FUZZI in the United States, and elsewhere.

ANSWER: Applicant is without sufficient information to form a belief as to the allegations in Paragraph 6, and therefore denies same.

7. Opposers have adopted and have consistently used the Registered Mark since at least as early as 1977, and have consistently used the Registered Mark in commerce since at least as early as 1977, a date long before the filing date of the Application.

ANSWER: Applicant is without sufficient information to form a belief as to the allegations in Paragraph 7, and therefore denies same.

8. The Registered Mark is valid and subsisting, and the federal registrations therefore are incontestable.

ANSWER: Applicant is without sufficient information to form a belief as to the allegations in Paragraph 8, and therefore denies same.

9. The federal registrations for the Registered Mark are prima facie evidence of the validity of the Registered Mark, of Opposer Locat's ownership of the Registered Mark, and of Opposer Locat's exclusive right use and/or license the mark's use in commerce.

ANSWER: The allegations contained in Paragraph 9 constitute conclusions of law to which no response is required. To the extent a response is deemed required, the allegations are denied.

10. Registration No. 2,489,920 for the Registered Mark is based upon Foreign Registration No. 00787970, registered on May 13, 1999, in Italy.

ANSWER: Applicant is without sufficient information to form a belief as to the allegations in Paragraph 10, and therefore denies same.

11. Upon information and belief, Applicant filed an intent-to-use trademark application for the mark TUZZI on June 2, 2006 for "sunglasses" in Class 9; "watches and jewelry" in International Class 14; "handbags, tote bags, briefcases and luggage" in International Class 18; and "clothing, namely, sweaters, pants, skirts, jackets, suits, outerwear, namely coats, jackets and rainwear, undergarments, sleep wear, swimwear, ladies hosiery, socks, tights, hats, mitts, gloves, scarves" in International Class 25 (the "Applicant's Goods").

ANSWER: Admitted.

12. Upon information and belief, Applicant had not used the mark TUZZI prior to the date on which it filed the intent-to-use based application.

ANSWER: Admitted.

13. There is no issue as to priority, as Application Serial No. 76/661,116 was filed based on an intent to use the mark, subsequent to both of the applications for the Registered Mark and long after the Registered Mark was first used in interstate commerce.

ANSWER: Applicant admits that Application Serial No. 76/661,116 was filed based on an intent to use the mark. Applicant admits that it appears that Application Serial No. 76/661,116 was filed subsequent to the applications for Registration Nos. 1,576,445 and 2,489,920. Applicant is without sufficient information to form a belief as to the remaining allegations in Paragraph 13, and therefore denies same.

14. At the time Applicant filed Application Serial No. 76/661,116, Applicant had actual and / or constructive knowledge of Opposer Fuzzi's rights in and to the Registered Mark, which were subsequently assigned to Locat.

ANSWER: Denied.

15. Applicant's Mark TUZZI is confusing similar to the Registered Mark in sound, appearance and connotation, so that contemporaneous use of the respective marks will create a likelihood of confusion, mistake and/or deception among the trade and consumers.

ANSWER: Denied.

16. The goods specified in the Application included in International Classes 18 and 25 are identical and/or closely related to the goods listed in the Registered Mark.

ANSWER: Applicant admits that Application Serial No. 76/661,116 and Registration Nos. 1,576,445 and 2,489,920 identify goods included in International Classes 18 and/or 25. Applicant is without sufficient information to form a belief as to the remaining allegations in Paragraph 16, and therefore denies same.

17. The goods covered by Applicant's application are of the type distributed and sold by Opposers, through the same channels of trade and to the same class of customers as the Registered Goods, and/or likely to be distributed and sold by Opposers, through the same channels of trade and to the same class of purchasers as Opposers' goods, allowing for

Opposers' normal and foreseeable expansion of use and licensing of Opposers' Registered Mark.

ANSWER: Applicant is without sufficient information to form a belief as to the allegations in Paragraph 17, and therefore denies same.

18. Opposer's Registered Goods and Applicant's Goods would reasonably be expected by the trade and purchasing public to emanate from and/or be sponsored by the same source.

ANSWER: Denied.

19. Because the marks are confusingly similar and the goods are identical and/or closely related, Opposers' customers and the general public are likely to be confused, mistaken, or deceived as to the affiliation, connection, or association of Applicant with Opposers, and may be misled into believing that Applicant's Goods under the mark are provided, sponsored, or approved by Opposers.

ANSWER: Denied.

20. The Registered Mark is symbolic of extensive goodwill and consumer recognition built up by Opposers through substantial amounts of time and effort in advertising and promotion through various channels of trade, with the result that customers and the public in general have come to know and recognize the Registered Mark, and to identify and associate the Registered Mark with Opposers.

ANSWER: Applicant is without sufficient information to form a belief as to the allegations in Paragraph 20, and therefore denies same.

21. Because of the strength and fame of the Registered Mark and because Applicant's purported mark is nearly identical thereto, any faults or imperfections in the goods of Applicant will reflect adversely on Opposers and their established goodwill and reputation, all to the detriment of Opposers unless this opposition is sustained.

ANSWER: Applicant denies that the Registered Mark and Applicant's mark are identical. Applicant is without sufficient information to form a belief as to the remaining allegations in Paragraph 21, and therefore denies same.

22. In view of the substantial investment in advertising and promotion under the Registered Mark, the Registered Mark has a valuable reputation.

ANSWER: Applicant is without sufficient information to form a belief as to the allegations in Paragraph 22, and therefore denies same.

23. The contemporaneous use and/or registration by Applicant of the mark TUZZI with the Registered Mark FUZZI will dilute and tarnish Opposers' rights in and to the Registered Mark FUZZI and will eventually result in a lack of designation or indication of origin, and a loss of distinctiveness and exclusivity in the Registered Mark if Applicant is allowed to register its purported mark.

ANSWER: Denied.

24. The Registered Mark is famous to the general consuming public within the meaning of Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c), as amended, by virtue of the mark's distinctiveness, the long duration and wide extent of use of the mark in connection with the goods with which the mark is used, the long duration, wide extent, and geographic reach of the advertising and publicity of the mark, and the high degree of the mark's recognition by the public.

ANSWER: Applicant is without sufficient information to form a belief as to the allegations in Paragraph 24, and therefore denies same.

25. Applicant's use of a highly similar mark on identical and/or closely related goods constitutes dilution by blurring and dilution by tarnishment under 15 U.S.C. § 1125(c).

ANSWER: Denied.

Respectfully submitted,

RICHTER INTERNATIONAL LTD.

By: _____

Ronald A. DiCerbo
MCANDREWS, HELD & MALLOY
500 W Madison
34th Floor
Chicago, IL 60661
(312) 775-8000

Attorney for Applicant