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

Proceeding	91181767
Party	Plaintiff Calista, Tools, LLC
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Date	03/14/2008
Attachments	answer of opposer to motion to amend application.pdf (4 pages)(33654 bytes)

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

CALISTA TOOLS, LLC	: Opposition No.91181767
Opposer	:
	: Mark:TOOLS
v.	: Application Serial No. 76673166
SALON K HAIR PRODUCTS, LLC	: Published in the Official Gazette on
Applicant	: September 11, 2007
	:
	: Filed February 26, 2007

**ANSWER OF THE OPPOSER TO THE MOTION
OF THE APPLICANT TO AMEND THE APPLICATION**

Pursuant to an agreement of counsel for the parties hereto, a copy of which accompanies this pleading, extending the time in which the Opposer had to file a response to the Motion to Amend Application, the Opposer through March 14, 2008, the Opposer states:

1. Denied. The record in the Patent and Trademark Office reflects that Albert S. Watkins, Esquire, as counsel and registered agent for the Applicant only, filed an application to register the mark "TOOLS". Opposer is without sufficient knowledge or information to admit or deny the balance of the allegations of this paragraph, therefore they are denied and proof is demanded.

2. Denied. The record in the Patent and Trademark Office reflects that Albert S. Watkins, Esquire, as counsel and registered agent for the Applicant only, filed an application to register the mark "TOOLS". Opposer is without sufficient knowledge or information to admit or deny the balance of the allegations of this paragraph therefore they are denied and proof is demanded.

3. Denied. Opposer is without sufficient knowledge or information to admit or deny the allegations of this paragraph therefore they are denied and proof is demanded.

4. Admitted. By way of further answer, both Salon K, LLC and Salon K Hair Products, LLC were formed by counsel for the Applicant.

5. Admitted.

6. The averments of this paragraph are denied.

7. Denied. Trademark Manual of Examining Procedures (“TMPEP”) Section 1201.02(c) provides that “**if there is a mistake in the manner in which the name of the applicant is set out in the application, the mistake may be correct by amendment**” emphasis added. Subsection (7) does not provide for a change of applicant as proffered by counsel for the Applicant. Section 1201.02 (b) require the application to be filed by the “party that owns the mark on the application filing date”, emphases added. An application by one not owning the mark is void. See Seats, Ltd, v. Great Seats, Inc. ____ USPQ2d____, Canc. No. 92032524 (TTAB June 14., 2007). Finally in the Applicant's Answer to the Notice of Opposition, under the heading Defenses to Allegations, counsel for the Applicant asserts in 2 that “counsel for applicant should have indicated the correct applicants names for the “TOOLS” trademark as Casey Ray and Kim Meecey.....,” counsel for the applicant is now asserting that Salon K, LLC, should have been the applicant, therefore strict proof is demanded.

8. Denied. In U.S. Pioneer Electronics Corp., et al. v. Evans Marketing, Inc., the applicant, Evans Marketing Company, Inc. filed a motion to amend its application under Rule 2.133 to change the applicant's name to Evans Marketing, Inc. The decision in the matter was that there was not a substitution of a party for a nonentity, (which counsel for the Applicant is attempting to do in this matter) but merely a misidentification of the proper name of the applicant

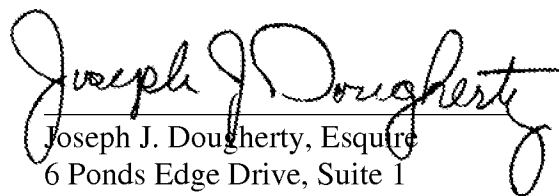
in the original application. In this matter counsel for the Applicant, who was notified on September 5, 2007 that the Applicant did not exist on the date of the application, is now, after an opposition has been filed, seeking to substitute another entity or individuals for the original applicant, which is not allowed. Therefore strict proof is demanded.

9. Denied. In Accu Personnel, Inc. v. Accustaff, Inc., 36 USPQ2d 1443 (TTAB 1996), it was held that the parties “acted as a single commercial enterprise when filing the application.” Here there is an attempt to substitute another entity, or as set for in the Applicant’s Answer to Notice of Opposition, two individuals as the applicant. Therefore strict proof is demanded.

10. Denied. The Motion to Amend Application overlooks the provisions of TMEP 1201.02 (b) and attempts to extend the scope of TEMP 1201.02(c) beyond its permissible limits. By way of further answer, counsel for the Applicant, six (6) months after being notified that the Applicant did not exist at the time of filing of the Application, is now attempting to substitute another entity.

WHEREFORE, Opposer requests that (i) the Motion to Amend Application be denied; and (ii) the registration of the mark TOOLS, application serial #76673166 be denied.

LYONS, DOUGHERTY, SHAFFER
& SCHNEIDER, LLC



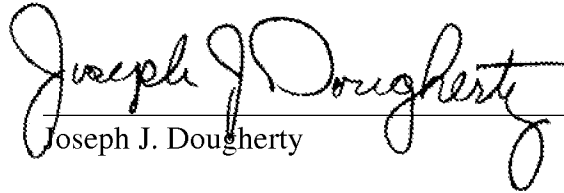
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CERTIFICATE OF SERVICE

I, Joseph J. Dougherty, hereby certify that on March 14, 2008 a true and correct copy of the forgoing Answer of the Opposer to the Motion to Amend Application was served via U.S.

First Class Mail, postage prepaid and via e-mail upon the following:

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