

ESTTA Tracking number: **ESTTA203276**

Filing date: **04/08/2008**

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

Proceeding	91182962
Party	Defendant Ocean Moody Creations, LLC
Correspondence Address	THOMAS L. MOSES MONAHAN & MOSES, LLC 13-B WEST WASHINGTON STREET GREENVILLE, SC 29601 tom.moses@momolaw.com
Submission	Answer and Counterclaim
Filer's Name	Thomas L. Moses
Filer's e-mail	tom.moses@momolaw.com
Signature	/Thomas L. Moses/
Date	04/08/2008
Attachments	OMC-004 Opposition Answer.pdf (19 pages)(3665519 bytes)

Registration Subject to Cancellation

Registration No	2282012	Registration date	09/28/1999
Registrant	OCEAN MINDED, INC. 6328 MONARCH PARK PLACE NIWOT, CO 80503 UNITED STATES		
Goods/Services Subject to Cancellation	Class 025. First Use: 1997/01/01 , First Use In Commerce: 1997/01/01 Goods/Services: clothing, namely, T-shirts, sweatshirts, shorts and hats		
Grounds for Cancellation	The registered mark has been abandoned.		

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

Crocs, Inc., & Ocean Minded, Inc.)	
)	
Opposers)	ANSWER AND COUNTERCLAIM
)	
v.)	Opposition No. 91182962
)	Serial No. 77188406
Ocean Moody Creations, LLC,)	
)	
Applicant)	
.....)	

In response to the above-referenced Opposition proceeding filed by Crocs, Inc. and Ocean Minded, Inc., Applicant answers as follows:

1. Applicant Ocean Moody Creations, LLC ("Applicant") applied for Applicant's Mark on May 23, 2007, and said application was assigned serial number 77/188,406,

Response: Admitted.

2. Application serial number 77/188,406 seeks the registration of Applicant's Mark, depicted as follows:

OCEAN MOODY

Response: Admitted.

3. Application serial number 77/188,406 seeks registration of Applicant's Mark in connection with the following goods:

“Shoes; Sandals; Belts; Pants; Tops; Hats; Ties; Bathing suits; Wraps; Jackets; Camp shirts; Dress shirts; Golf shirts; Knit shirts; Shirts; Short-sleeved shirts; Sports shirts” in International Class 25.

Response: Admitted.

4. Applicant’s Mark was published for Opposition in the Official Gazette on November 13, 2007. Opposer Crocs filed an extension of time to oppose on December 12, 2007. The Trademark Trial and Appeal Board granted Opposer Crocs’ request to extend time to oppose until March 12, 2008.

Response: Admitted.

5. Accordingly, this Notice of Opposition is timely filed.

Response: Applicant is without knowledge or information sufficient to form a belief as to the truth of this statement, thus Applicant denies same.

6. Opposer Ocean Minded is the owner of the following United States Trademark Registration: 2,282,012 for the mark OCEAN MINDED for “footwear and clothing, namely, sandals, t-shirts, sweat-shirts, shorts and hats” in International Class 25. A copy of the registration certificate is attached hereto as Exhibit A. In addition, Opposer Ocean Minded is the owner of the following valid and subsisting U.S. Trademark Application

No. 78/499,677 for the mark OCEAN MINDED for “printed matter, namely newsletters in the field of ocean awareness; in International Class 16 and “retail store services of wearing apparel; in International Class 35. A printout from the USPTO TARR database evidencing the status of this application is attached hereto as Exhibit B.

Response: Applicant is without knowledge or information sufficient to form a belief as to the truth of this statement, thus Applicant denies same.

7. Since at least 1997, the mark OCEAN MINDED has been used in interstate commerce in conjunction with footwear, clothing and hats, which is prior to the May 23, 2007 filing date of Applicant’s application.

Response: Applicant is without knowledge or information sufficient to form a belief as to the truth of this statement, thus Applicant denies same.

8. Opposers have promoted the OCEAN MINDED marks through a wide variety of channels, Products bearing the OCEAN MINDED Marks were sold in 1600 retail outlets in 2007. Opposers have also promoted the OCEAN MINDED Marks through electronic media, including Opposer Ocean Minded’s website located at <http://www.oceanminded.com> and Opposer Crocs’ website located at <http://www.crocs.com>. In 2007, approximately 215,400 pairs of shoes were sold under the OCEAN MINDED Marks, amounting to nearly \$3.25 million in sales worldwide. Last year, Opposers spent nearly \$90,000 advertising the OCEAN MINDED Marks.

Through such promotion and use by Opposers, the OCEAN MINDED Marks are widely recognized as an indicator of source for Ocean Minded's products and represents valuable and substantial goodwill of Opposer Ocean Minded in its business.

Response: Applicant is without knowledge or information sufficient to form a belief as to the truth of this statement, thus Applicant denies same.

9. Opposers are not connected in any way with Applicant's use of Applicant's Mark.

Response: Admitted.

10. The OCEAN MINDED Marks are distinctive in connection with Opposer Ocean Minded's footwear, clothing and hat products.

Response: Applicant is without knowledge or information sufficient to form a belief as to the truth of this statement, thus Applicant denies same.

11. Applicant's use of or intended use of Applicant's Mark is without Opposers' consent or permission.

Response: Admitted as stated, although Applicant denies the implication that consent or permission from Opposer is necessary for Applicant to use its mark on its goods.

12. Applicant's Mark is confusingly similar to the OCEAN MINDED Marks.

Response: Denied.

13. The goods identified in application serial number 77/188,406 are related to the footwear, clothing and had goods offered by Opposer Ocean Minded under the OCEAN MINDED Marks. Such related goods are offered and will be offered in the same channels of trade.

Response: Denied.

14. Because of the similarity of Applicant's Mark to the OCEAN MINDED Marks, and the overlapping and related goods offered in connection with Applicant's Mark through similar channels of trade, persons familiar with Opposers and their goods are likely to be misled into believing that Applicant's goods, if offered under Applicant's Mark, are sponsored by or otherwise affiliated with Opposers in some way, thereby damaging Opposers.

Response: Denied.

15. Applicant's use or intended use of Applicant's Mark in connection with Applicant's goods is likely to cause confusion, mistake, or deception as to the source, origin, or sponsorship or approval of Applicant's goods, in that consumers are likely to

believe that Applicant's goods are Opposers' goods, or are in some way legitimately connected with, licensed, or approved by Opposers.

Response: Denied.

16. Opposers believe that the registration of Applicant's Mark on the Principal Register in connection with the opposed services would be inconsistent with Opposers' rights under the common law and the Trademark Act, and Opposers believe that such registration would be damaging to Opposers.

Response: Denied.

AFFIRMATIVE DEFENSES

1. There has never been any confusion known to Applicant.
2. Opposer Crocs, Inc. has failed to allege grounds sufficient to establish its standing to maintain the Opposition. U.S. Reg. No. 2,282,012 for the mark OCEAN MINDED and U.S. Trademark Application No. 78/499,677 for the mark OCEAN MINDED each lists the owner as Ocean Minded, Inc. Opposer Crocs, Inc. has not established any connection with Ocean Minded Sandals, Inc. or Ocean Minded, Inc., and thus has not established standing to maintain the Opposition.
3. The United States Patent and Trademark Office, in its examination of Applicant's U.S. Trademark Application Serial No. 77/188406, found no likelihood of confusion between Applicant's Mark and the Mark set forth in U.S. Reg. No. 2,282,012. The only word common to Applicant's Mark and the Mark set forth in U.S. Reg. No. 2,282,012 is

the term OCEAN, and the marks OCEAN MOODY and OCEAN MINDED clearly do not convey the same commercial impression. Therefore, Opposer's argument that a likelihood of confusion exists between these marks is without merit.

3. Based on Applicant's preliminary investigation of the websites located at <http://www.oceanminded.com> and <http://www.crocs.com>, it appears that neither Crocs, Inc. nor Ocean Minded, Inc. is selling T-shirts, sweatshirts, shorts or hats under the OCEAN MINDED Mark, as listed in U.S. Reg. No. 2,282,012. Thus, it appears that, with respect to T-shirts, sweatshirts, shorts or hats, Ocean Minded, Inc. has abandoned its mark under the above-referenced Registration.

COUNTERCLAIM

(PARTIAL CANCELLATION OF U.S. Reg. No. 2,282,012)

1. Ocean Moody Creations, LLC (Applicant), is a corporation organized under the laws of the State of South Carolina, having a principal place of business at 1012 Pyatt Street, Georgetown, SC 29440.

2. Upon information and belief, Ocean Minded, Inc. (Opposer), is a corporation organized under the laws of Colorado, having a principal place of business at 6328 Monarch Park Place, Niwot, Colorado 80503.

3. Applicant Ocean Moody Creations, LLC ("Applicant") applied for Applicant's Mark on May 23, 2007, and said application was assigned serial number 77/188,406,

4. Application serial number 77/188,406 seeks the registration of Applicant's Mark, depicted as follows:

OCEAN MOODY

5. Application serial number 77/188,406 seeks registration of Applicant's Mark in connection with the following goods:

"Shoes; Sandals; Belts; Pants; Tops; Hats; Ties; Bathing suits; Wraps; Jackets; Camp shirts; Dress shirts; Golf shirts; Knit shirts; Shirts; Short-sleeved shirts; Sports shirts" in International Class 25.

6. Upon information and belief, Opposer Ocean Minded, Inc. is the owner of the following United States Trademark Registration: 2,282,012 for the mark OCEAN MINDED for "footwear and clothing, namely, sandals, t-shirts, sweat-shirts, shorts and hats" in International Class 25.

7. On March 12, 2008, Opposer Ocean Minded, Inc. and Opposer Crocs, Inc. filed a Notice of Opposition proceeding before the United States Patent and Trademark Trial and Appeal Board, against Applicant's Mark OCEAN MOODY.

8. Upon information and belief, neither Opposer Ocean Minded, Inc., nor any of its licensees or assignees is currently using the OCEAN MINDED Mark for t-shirts, sweat-shirts, shorts or hats, as set forth in United States Trademark Registration: 2,282,012. Applicant is providing herewith a copy of the total list of products sold at www.oceanminded.com as Exhibit A.

9. Upon information and belief, neither Opposer Ocean Minded, Inc., nor any of its licensees or assignees has used the OCEAN MINDED Mark for t-shirts, sweat-shirts, shorts or hats for a period of at least 3 years, and Opposer's mark has lost all capacity as a source indicator for t-shirts, sweat-shirts, shorts and hats.

10. Upon information and belief, neither Opposer Ocean Minded, Inc., nor any of its licensees or assignees intends to resume using the OCEAN MINDED Mark for i-shirts, sweat-shirts, shorts or hats.

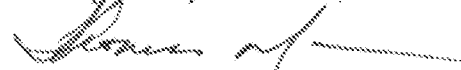
11. Opposer Ocean Minded, Inc. has thus partially abandoned its registered mark by discontinuing use of said mark for a period of at least 3 years on t-shirts, sweat-shirts, shorts and hats. The continued registration of Opposer's Mark is impairing Applicant's ability to obtain a U.S. registration for its Mark, thus Applicant is being damaged by the continuing registration of Opposer's mark as applied to t-shirts, sweat-shirts, shorts and hats.

RELIEF REQUESTED

Applicant requests that this opposition proceeding be dismissed and that its application be registered forthwith. Further, Applicant requests that the board delete the terms "t-shirts, sweat-shirts, shorts and hats" from United States Trademark Registration 2,282,012 on the grounds that Ocean Minded, Inc. has partially abandoned its Mark by discontinuing use of the mark on said goods.

WHEREFORE, the application for registration should be passed to registration, and this opposition should be dismissed.

Respectfully submitted,



Thomas L. Moses
Registration No. 39,781
Monahan & Moses, LLC
13-B West Washington St.
Greenville, SC 29601

Tel: 864-241-4604
Fax: 864-241-4606

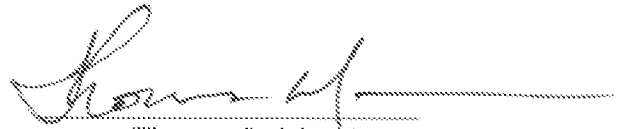
April 8, 2008

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing ANSWER AND COUNTERCLAIM has been served via first class mail, postage prepaid, to Opposer's attorney;

Jennifer Daniel Collins, Esq.
Faegre & Benson LLP
1700 Lincoln Street 3200 Wells Fargo Center
Denver, CO 80203-4532

April 8, 2008



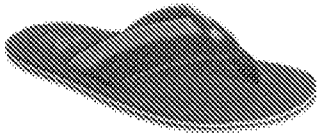
Thomas L. Mosas

EXHIBIT A

- Total Items: 0
- Current Total: \$0.00
-

[view cart](#) [wishlist](#)

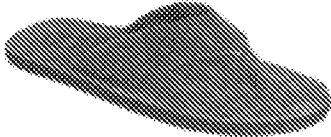
Men's



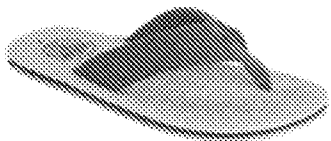
Canejo



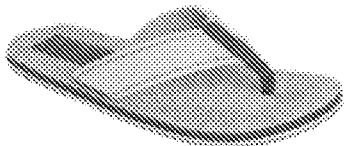
Commuter



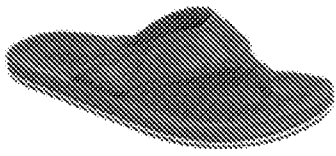
Crusader



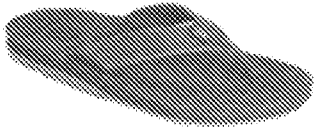
Grass Roots



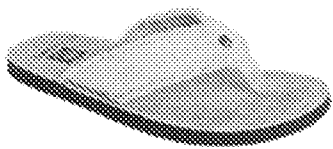
Long Brothers



Marco



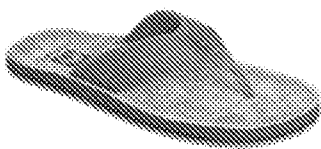
Mokulua



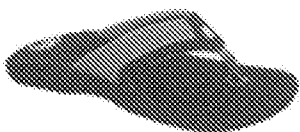
Namiad



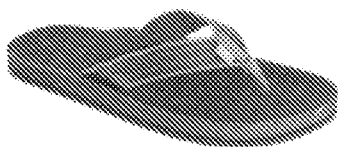
Professor



Scorpion



Seaweed



Southern Baja

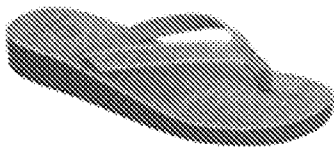


Stitch

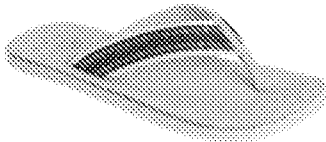
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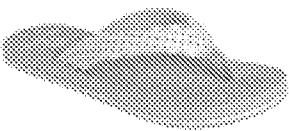
Chamomile



Del Mar



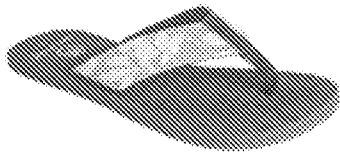
Flair



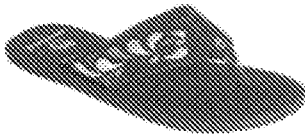
Folly



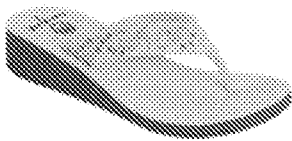
Hibiscus



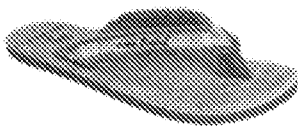
Holiday



Honey



Ivy



Laguna



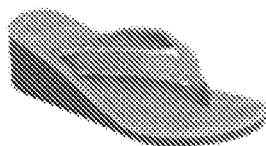
Manhattan



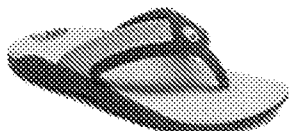
Masquerade



Mokulua



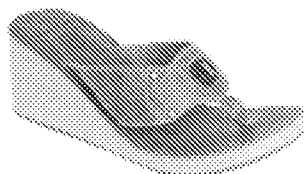
Ridge



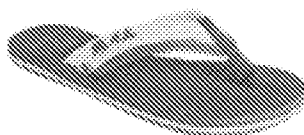
Seaweed



Siren



Society



Twilight

Boys



Dawn Patrol



Malibu



Rover

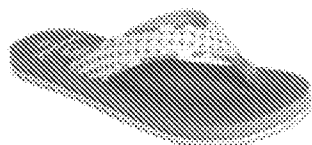


Safari



Scholar

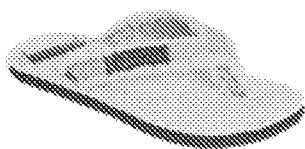
Girl's



Chickadee



Iris



Laguna



Siren

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Home

- [Products](#)
 - [Men's Footwear](#)
 - [Canejo](#)
 - [Commuter](#)
 - [Crusader](#)
 - [Grass Roots](#)
 - [Long Brothers](#)
 - [Marco](#)
 - [Mokulua](#)
 - [Nomad](#)
 - [Professor](#)
 - [Scorpion](#)
 - [Seaweed](#)
 - [Southern Baja](#)
 - [Stitch](#)
 - [Women's Footwear](#)
 - [Chamomile](#)
 - [Del Mar](#)
 - [Flair](#)
 - [Folly](#)
 - [Hibiscus](#)
 - [Holiday](#)
 - [Honey](#)
 - [Ivy](#)
 - [Laguna](#)
 - [Manhattan](#)

- [Masquerade](#)
 - [Mokulua](#)
 - [Ridge](#)
 - [Seaweed](#)
 - [Siren](#)
 - [Society](#)
 - [Twilight](#)
- [Boy's Footwear](#)
 - [Dawn Patrol](#)
 - [Malibu](#)
 - [Rover](#)
 - [Safari](#)
 - [Scholar](#)
- [Girl's Footwear](#)
 - [Chickadee](#)
 - [Iris](#)
 - [Laguna](#)
 - [Siren](#)
- [Athletes](#)
- [Shop](#)
 - [Cart](#)
 - [Wishlist](#)
 - [Checkout](#)
 - [My Account](#)
 - [Edit Profile](#)
 - [Order Status](#)
 - [Sales Return Summary](#)
 - [Create Sales Return](#)
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