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

Proceeding	91183059
Party	Defendant Franco, Joseph
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

JOHN VARVATOS APPAREL CORP.,

Opposer,

v.

FRANCO, JOSEPH

Applicant.

Application No. 77/183,576

Opposition No. 91183059

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant, Joseph Franco (“Applicant”), by and through its attorneys, Ostrolenk, Faber, Gerb & Soffen, LLP, hereby answers the Notice of Opposition as follows:

First unnumbered paragraph: Applicant admits that it has filed Application No. 77/183,576 to register Miscellaneous Design consisting of a hand with two fingers extended in a “peace sign” (“Proposed Mark”); Applicant denies that John Varvatos Apparel Corp. (“Opposer”) will be damaged by the registration of Applicant’s mark; Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the Notice of Opposition and, therefore, denies same.

1. As to paragraph 1 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

2. As to paragraph 2 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

3. As to paragraph 3 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

4. As to paragraph 4 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

5. As to paragraph 5 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

6. As to paragraph 6 of the Notice, Applicant denies the allegations.

7. As to paragraph 7 of the Notice, Applicant admits the allegations.

8. As to paragraph 8 of the Notice, Applicant admits that the filing date of Applications Serial Nos. 78/569,538 and 78/569,651 (“Opposer’s Applications”) is earlier than the filing date of Application Serial No. 77/183,576; Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 8 and, accordingly, denies the same.

9. As to paragraph 9 of the Notice, Applicant denies the allegations.

10. As to paragraph 10 of the Notice, Applicant denies the allegations.

11. As to paragraph 11 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

12. As to paragraph 12, Applicant denies the allegations.

13. As to paragraph 13, Applicant denies the allegations.

Applicant denies that Opposer is entitled to the relief requested in the Notice of Opposition.

AFFIRMATIVE DEFENSES

14. Applicant's Proposed Mark and subject-marks of Opposer's Applications ("Opposer's Marks") have substantially different visual appearances making confusion of the trademarks unlikely.

15. Applicant's Proposed Mark includes a stylized letter "R" within the design of a hand with two fingers extended in a "peace sign." Letter "R" is suggestive of the relationship between the Applicant's Proposed Mark and Applicant's other marks, e.g., Applicant's mark PEACE ROCKS (Reg. No. 3372795). This letter "R" does not appear in any of the Opposer's Marks making confusion of the trademarks unlikely.

16. Opposer does not own exclusive rights to all designs consisting of a hand with two fingers extended in a "peace sign".

17. Consumers of the parties' respective goods are sophisticated and discriminating.

18. Upon information and belief, Opposer did not use Opposer's Marks in commerce on the dates indicated in the Opposer's Amendment to Allege Use filed on February 24, 2006.

19. Upon information and belief, Applicant has priority over Opposer for at least some of the goods at issue in this opposition proceeding.


WHEREFORE, Applicant respectfully requests that this Opposition No. 91183059

be dismissed with prejudice.

Dated: April 28, 2008
New York, New York

THIS CORRESPONDENCE IS BEING
SUBMITTED ELECTRONICALLY THROUGH
THE PATENT AND TRADEMARK OFFICE
ESTTA FILING SYSTEM ON April 28, 2008.

Respectfully submitted,



Anna Vishev

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Attorneys for Applicant

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION** was served upon counsel for Opposer this 28th day of April, 2008 by First-Class mail, postage prepaid, addressed as follows:

Christopher M. Turk
Senior Counsel
John Varvatos Apparel Corp.
3411 Silverside Road
Wilmington, DE 19810



Anna Vishev