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

Proceeding	91188983
Party	Defendant PREMIUM HOLDING
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Date	05/04/2009
Attachments	Answer to Opposition.pdf (10 pages)(868707 bytes)

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

Premium Holding
Applicant

v.

Fendi Adele S.R.L,
Opposer

Opposition No. 91188983

Applicant's Response to Opposer's Notice of Opposition

Robert Thompson, the Owner of PREMIUM HOLDING and the "Applicant" will show as set forth in the attached Response to the Opposer's Notice of Opposition memorandum that the registration of the Applicant's mark would not damage the Opposer's mark in anyway. Thus the Opposer's Notice of Opposition is completely not warranted.

APPLICANT'S OPPOSITION ANSWERS

Opposition No. 1: Opposer is a well known Italian design company famous for its handbags, clothing, furs, and shoes. Opposer also sells, among other things, cosmetics, luggage, leather products, jewelry, and eyeglasses.

Applicant's Answer No. 1: The registration of the Applicant's mark will not damage any of the products the Opposer now sells.



Opposition No. 2: Since at least as early as 1976, Opposer has used the famous design logo (“the Fendi Logo”) in interstate commerce on or in connection with clothing products. Opposer has continuously used said mark to identify and distinguish Opposer’s goods from those of others. The Opposer has advertised and promoted its products bearing the Fendi Logo making clear and prominent use of that trademark to identify and distinguish Opposer’s products from those sold by others. As a result of such advertising and promotion, Opposer has enjoyed extensive distribution and sales of its goods offered and sold under the Fendi Logo.



Applicant’s Answer No. 2: The Applicant’s mark contains a stylized design consisting of the letters “FH” with the word FRESHHOUSE below the letters. This mark does not bear a resemblance to the Opposer’s mark, thus the Applicant’s mark will not interfere with any advertising or promotion the Opposer is doing.

Opposition No. 3: Long prior to the filing date of Applicant’s intent-to-use application, the Fendi Logo has been and continues to be used by Opposer for the purposes of identifying and distinguishing Opposer’s products from the goods of others and the trade and the consuming public have come to know and recognize said trademark as identifying the goods of Opposer as the source thereof exclusively.



Applicant’s Answer No. 3: The Applicant’s mark does not bear a resemblance to the Opposer’s mark, thus the Applicant’s mark will not be confused for the Opposer’s mark or goods to the consuming public.




Opposition No. 4: As a result of the care and skill exercised by Opposer in the conduct of its business, the uniform standards of high quality of goods offered and sold under the Opposer's Fendi Logo, the extensive advertising and promotion of the Fendi Logo, and the widespread goods offered under the Fendi Logo and the public acceptance thereof, goods bearing Opposer's Fendi Logo have become well and favorably known by the trade and public with the Fendi Logo identifying and distinguishing Opposer as the exclusive source or origin of Opposer's goods promoted and sold under said mark. Opposer's mark is strong and has become famous, symbolizing and embodying goodwill of inestimable value.

Applicant's Answer No. 4: The Applicant's mark does not bear a resemblance to the Opposer's mark, thus the Applicant's mark will not be confused for the Opposer's mark to the consuming public.

Opposition No. 5: Opposer is the owner of the following registrations on the Principal Register

in the United States Patent and Trademark Office:

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Goods</u>
	1,267,539	February 21, 1984	<p>Perfumes, toilet water, face soap, bath soap, skin cleansing and moisturizing creams and lotions, hair creams and lotions, lipstick, eye shadow, mascara, rouge, face powder, talcum powder.</p> <p>Fur coats, fur stoles, fur pieces, rainwear, cloth coats, jackets, skirts, trousers, dresses, hosiery, shirts, blouses, headwear, scarves, foulards, gloves, ties, neckwear, socks, stockings, belts, swimwear, lingerie, shoes, boots and slippers.</p>
	1,214,472	October 26, 1982	<p>Leather and imitations of leather.</p> <p>Luggage, trunks and traveling bags.</p> <p>Umbrellas and parasols.</p>

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Goods</u>
	1,583,578	February 20, 1990	Watches, and parts thereof.
	1,439,955	May 19, 1987	Attache-cases, tote bags, briefcases, key cases, credit card cases, garment bag for travel, handbags, shoulder bags, luggage, passport cases, briefcase type portfolios, suitcases. Belts, shoes, boots, fur coats, jeans, trousers.
	1,845,311	July 19, 1994	Body lotions, skin moisturizer.

Said registrations are valid and subsisting, in full force and effect, have not been cancelled, and have become incontestable by operation of law.



Applicant's Answer No. 5: The Applicant's mark design consisting of the letters "FH" with the word FRESHHOUSE below the letters. This mark is




an replica of the Applicant's mark (Serial # 77075623) contains a stylized design consisting of the letters "FH" with the word FRESHHOUSE below the letters. This mark (Serial # 77075623) received a Notice of Allowance on November 27, 2007 and was only abandoned on 05/28/2008 by the Applicant because the Applicant decided to change the

spelling of the mark. This shows that the Applicant's mark will not be confused for the Opposer's mark in anyway.

Opposition No. 6: Applicant's alleged mark contains a stylized design element consisting of the letters "FH" with "Freshhouse" below the letters. The letters are positioned in such a way as to be a colorable imitation of the famous Fendi Logo.

Applicant's Answer No. 6: The letter position of the Applicant's mark does not bear a resemblance to the Opposer's mark, the Applicant's mark consist of the letters "FH" with Freshhouse below the letters and the Opposer's mark consist of the letters "FF" with Fendi next to the letters, thus the two marks are not similar in anyway.



Opposition No. 7: By the application herein opposed, Applicant seeks to register  as a trademark for "baseball caps; boots; coats; dresses; gloves; hats; jackets; jeans; knit shirts; knitted caps; neckties; shirts; shoes; shorts; skirts; sneakers; sport coats; suits; sweat shirts; sweat shorts; sweaters; t-shirts; undergarments."

Applicant's Answer No. 7: The registration of the Applicant's mark will not damage any of the Opposer's products now registered.

Opposition No. 8: Applicant's clothing products, which are to be offered under its alleged FH Logo, are virtually identical to the goods on or in connection with which the Opposer has long used and continues to use the Fendi Logo.

Applicant's Answer No. 8: All trademarks registered with the United States Patent and Trademark Office under Goods and Services IC 025 is identical to the goods the Opposer continues to use. This is not ground to deny the applicant's mark.

Opposition No. 9: The goods covered by the application for registration of the alleged FH Logo will be encountered by the same or similar class of purchasers as those who are interested in or familiar with the goods promoted, offered and provided by Opposer under the Fendi Logo.

Applicant's Answer No. 9: The goods covered by the applicant's mark will not be encountered by the same class of purchasers. The Opposer's goods target a luxury class purchaser and the Applicant's goods target a moderate class purchaser.

Opposition No. 10: The goods on which Applicant's claimed mark is intended to be used and the goods on or in connection with which Opposer has used and continues to use its Fendi Logo will be advertised, promoted, offered, and distributed through the same or similar channels of trade to the same or similar classes of purchasers and the use of the same or a similar mark in connection with such goods will be likely to cause confusion, or to cause mistake, or to deceive purchasers, all to the damage of Opposer.

Applicant's Answer No. 10: The Applicant's goods will not be advertised, promoted, offered or distributed through the same channels as the Opposer's goods because the Applicant's goods are targeted to a different purchaser and the Applicant's mark does not bear a resemblance to the Opposer's mark, thus the Applicant's mark will not cause a purchaser to be confused.

Opposition No. 11: Applicant's claimed FH Logo so closely resembles Opposer's registered Fendi Logo as to be likely, when applied to Applicant's goods, to cause confusion, or to cause mistake, or to deceive purchasers, all to the damage of Opposer.

Applicant's Answer No. 11: The Applicant's mark does not bear a resemblance to the Opposer's mark, thus the Applicant's mark will not cause confusion, or cause mistake or deceive purchasers.

Opposition No. 12: Applicant's claimed FH Logo so closely resembles Opposer's Fendi Logo so that purchasers will mistakenly believe that Opposer is the source of Applicant's goods if and when Applicant uses its claimed mark or that Opposer has authorized, sponsored, approved of, or in some manner associated itself with goods of Applicant thereby causing a likelihood of confusion, all to the damage of Opposer.

Applicant's Answer No. 12: The Applicant's mark does not bear a resemblance to the Opposer's mark, thus the Applicant's mark will not be seen as something that is authorized, sponsored or approved by the Opposer.

Opposition No. 13: Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the confusing and misleading use of Applicant's mark and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer to the well known Fendi Logo.

Applicant's Answer No. 13: The Applicant's mark does not bear a resemblance to the Opposer's mark, thus the registration of the Applicant's mark will not confuse or mislead and will not damage the Opposer's mark in anyway.

Opposition No. 14: As alleged above, Opposer adopted and used and has continued to use the Fendi Logo in interstate commerce long before Applicant filed the application for the FH Logo. The Fendi Logo has since become a famous mark with strong and distinctive character qualifying for protection under Section 13 (15 U.S.C. § 1063 as amended) and Section 43(c) (15 U.S.C. § 1125(c)) of the Lanham Act.

Applicant's Answer No. 14: The Applicant's mark does not bear a resemblance to the Opposer's mark, thus the registration of the Applicant's mark will not damage the Opposer's mark in anyway.

Opposition No. 15: Opposer's Fendi Logo is a famous mark within the meaning of Section 43(c) of the Trademark Act of 1946, as amended, and the use by Applicant of the FH Logo would cause dilution of the distinctive quality of the Opposer's mark under Section 43(c).

Applicant's Answer No. 15: The Applicant's mark does not bear a resemblance to the Opposer's mark, thus the registration of the Applicant's mark will not cause dilution of the distinctive quality of the Opposer's mark in anyway.

Opposition No. 16: By reason of the foregoing, Opposer believes it will be damaged by the registration of Applicant's claimed trademark.

Applicant's Answer No. 16: The Applicant's foregoing answers show that the Applicant's mark does not bear a resemblance to the Opposer's mark, thus the Applicant's mark would not cause damage to the Opposer's mark and should be approved for registration.

Respectfully Submitted,

Robert Thompson
Premium Holding (Owner)

Dated: May 3, 2009

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Premium Holding
Applicant

v.

Fendi Adele S.R.L,
Opposer

Opposition No. 91188983

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I hereby certify that the Applicant's Response to the Opposer's Notice of Opposition have been filed electronically, with the United States Patent and Trademark Office, Trademark Trial and Appeal Board, on 3rd day of May,2009

I further certify that a copy of the afore-mentioned document were sent by first-class mail, postage prepaid to Opposer's Attorney Keith Sharkin at King & Spalding LLP, 1185 Avenue of the America, New York, New York 10036 and by electronic delivery to email address ksharkin@kslaw.com this 3rd of May, 2009