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

Proceeding	91191556
Party	Defendant Betty Rides Inc.
Correspondence Address	KEVIN M. HAYES KLARQUIST SPARKMAN, LLP 121 SW Salmon StreetOne World Trade Center, Suite 1600 PORTLAND, OR 97204 UNITED STATES ptotmdocket@klarquist.com, kevin.hayes@klarquist.com, salumeh.loesch@klarquist.com
Submission	Other Motions/Papers
Filer's Name	Salumeh R. Loesch
Filer's e-mail	ptotmdocket@klarquist.com, kevin.hayes@klarquist.com, salumeh.loesch@klarquist.com
Signature	/Salumeh R. Loesch/
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Attachments	APP STMT OF NON-OPP TO OPP MOTION FOR LEAVE TO AMEND NOT OF OPP (1).PDF (4 pages)(164755 bytes)

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

ARCHIE COMIC PUBLICATIONS, INC. Opposer, v. BETTY RIDES, INC. Applicant.	**APPLICANT BETTY RIDES, INC.'S STATEMENT OF NON-OPPOSITION TO OPPOSER ARCHIE COMIC PUBLICATIONS, INC.'S MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION** Opposition No. 91191556 (Application Ser. No. 77/456,294)

APPLICANT BETTY RIDES, INC.'S STATEMENT OF NON-OPPOSITION TO OPPOSER ARCHIE COMIC PUBLICATIONS, INC.'S MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION

Applicant Betty Rides, Inc. is pleased that Opposer Archie Comics Publications, Inc. ("Archie") again is seeking "to further add specificity to its pleadings." (Motion for Leave to Amend Notice of Opposition at 2.) Betty Rides does not oppose Archie's Motion for Leave to Amend Notice of Opposition because Archie's proposed Second Amended Notice of Opposition ("Second Amended Notice") adds some additional specificity. However, Archie's Second Amended Notice still fails to definitively state Archie's claims because Archie still does not state what marks it alleges it uses on what goods. The Board should order Archie to specifically state which of its eight alleged "BETTY Marks" it claims to use on what specifically-identified goods.

Instead of pleading what goods it uses on which marks, Archie alleges that it owns a collection of eight "BETTY Marks" that it uses on a listing of 15 goods (in addition to the 28 goods it lists in its amended petition). (*See, e.g.,* Second Amended Notice ¶¶ 1, 5.) While listing particular goods is an improvement from merely listing "International Classes," as Archie did in its original pleading, the listed goods are still not tied to any particular marks. The alleged

collective "BETTY Marks" are all different marks, only one of which is for the alleged word mark BETTY (for comic books – Reg. No. 2,149,569). It is inappropriate and unclear for Archie to lump these different marks together as supposed "BETTY Marks" and then allege that the collective "BETTY Marks" are used on a list of 15 goods. This manner of pleading does not notify Betty Rides of the claims that it faces. It is impossible for Betty Rides to know from Archie's Second Amended Notice which particular marks Archie alleges are used with which particular goods (unless Archie is alleging that each and every of its alleged "BETTY Marks" is used on each and every alleged good, which would be contrary to Archie's document production in the Opposition proceeding).

A trademark exists only to the extent that a word or device is used on a good and the likelihood of confusion analysis is based on a comparison of marks (word/device plus goods) and their other characteristics (such as channels of trade). Thus, it is critical for an opposition pleading to clearly recite the alleged marks and the alleged goods upon which those alleged marks are claimed to be used. Archie's Second Amended Notice does not meet this standard.

Betty Rides also notes that, in paragraph 4 of the Second Amended Notice, Archie claims to have used "certain" of its BETTY Marks since 1950. This is again indefinite. Archie is trying to allege facts that support its claim that its alleged BETTY Marks are "famous," but appears to avoid providing any details necessary for its claim, such as what marks and what goods it claims to have used since 1950. How is Betty Rides to know what "certain" marks means? This statement should be stricken or pled more definitely to notify Betty Rides which marks and on what goods Archie is alleging use since 1950.

In sum, although pleading requires a short and plain statement of a case, it also is required to "include sufficient detail to give fair notice of the basis for the claim." (Board

Decision, July 27, 2010, at 4.) So long as Archie continues to fail to match each alleged mark to a good on which it allegedly uses the particular mark, its pleadings will continue to fail to provide Betty Rides with fair notice of Archie's claims. Accordingly, while Betty Rides does not oppose Archie's motion for leave to amend its pleadings, Betty Rides submits that the Board should issue a clarifying order specifying that Archie amend its pleadings again to plead:

1. For each of its eight alleged "BETTY Marks," the specific goods on which it uses that particular BETTY mark; and
2. Which of its alleged "BETTY Marks" it has been using since 1950, and on what goods it has used that particular BETTY Mark since that time.

If Archie fails to so amend its Second Amended Notice, its Second Amended Notice should be limited to the goods recited in Archie's registrations.

Dated: September 7, 2010

Respectfully submitted,

BETTY RIDES, INC.

By: _____

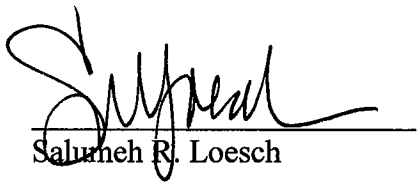
Ramon A. Klitzke II, OSB # 802889
Kristin L. Cleveland, OSB # 001318
Salumeh R. Loesch, OSB # 090074
Kevin M. Hayes, OSB #012801
KLARQUIST SPARKMAN, LLP
One World Trade Center
121 SW Salmon Street, Suite 1600
Portland, Oregon 97204
Tel: 503-595-5300
Fax: 503-595-5301
Email: ramon.klitzke@klarquist.com

Attorneys for Applicant Betty Rides, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 7, 2010, the foregoing **APPLICANT BETTY RIDES, INC.'S STATEMENT OF NON-OPPOSITION TO OPPOSER ARCHIE COMIC PUBLICATIONS, INC.'S MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION** was served on Opposer's Attorneys, by email and first class mail, to:

Jess M. Collen
Oren Gelber
Jenny T. Slocum
Matthew C. Wagner
COLLEN IP
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
Email: ogelber@collenip.com



Salumeh R. Loesch