

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

In the Matter of Trademark Application AVA & BELLA
Serial No.:76/693,193, Filed September 29, 2008

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Color Image Apparel, Inc.,

Opposer,

v.


Opposition No. 91195284

Direct Resourcing Inc.

Applicant.
-----x

RESPONSE TO MOTION TO DEFAULT

Applicant, Direct Resourcing Inc., a New York corporation, denies categorically that it ever intended to default on filing an Answer to the Notice of Opposition but it had hoped that a signed Agreement would be in place before July 24, 2010 when the Answer was due. The parties were actively negotiating in good faith and an Agreement to permit Applicant's mark, subject to some restraints, had been passed back and forth for some months. Unfortunately, when an e-mail was not answered, Applicant's president, Stephen Weiss, then had to leave for China for some weeks. Upon his return from China, his situation was further complicated by a family medical emergency. Applicant's attorney was actually not contracted to file an Answer until after the Motion to Default was issued, although she did file the application. And she had spoken to Examiner relative to what changes to the mark would be permissible, without necessitating a re-filing of the application so this could be incorporated in the Agreement. It is also noted that

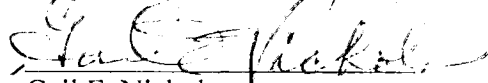

09-07-2010

Applicant's attorney is now in England and no longer with Graham Campaign PC so that has further complicated matters.

Applicant's Answer is attached herewith and Applicant prays that the Motion to Default be set aside so the parties can continue to finalize the Settlement Agreement, which will allow Applicant's mark to be registered. It is believed that this can be done in the next sixty (60) days .

Dated: September 1, 2010

Respectfully submitted,



Gail E. Nickols
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ANSWER

Applicant, Direct Resourcing Inc., a New York corporation having a place of business at 463 Seventh Avenue, #1518, New York, New York 10018, now responds to Opposer's Notice of Opposition filed June 14, 2010.

1. Applicant admits that Opposer is the owner of U.S. Trademark Registration No. 2,668,441 for the mark BELLA but notes that this is not a word mark with a design but a **stylized** mark with a distinctive "e" in the word BELLA. Applicant admits that this registration appears to be current for only cotton t-shirts and tops.

2. Applicant admits that Opposer is the owner of U.S. Trademark Registration 3,519,794 for BELLA as a word mark for an extensive list of women's clothing that does **not** include any of Applicant's goods in the subject application, namely sleepwear, loungewear and robes. Said registration appears to be current.

3. As to the allegations in Opposer's paragraph 3, Applicant is without sufficient

knowledge as to form a belief. No proof of advertising or continuous use was submitted with the Notice of Opposition by Opposer for its BELLA registrations.

4. Applicant admits that it has applied to register the word mark AVA & BELLA, Ser. No. 76/693,193 on September 29, 2008 as an intent to use mark in International Class 25 for ladies' sleepwear, loungewear and robes.

5. Applicant notes that the word BELLA is merely the Italian for "beautiful" and as such is an inherently weak and merely laudatory mark when applied to clothing. There is no distinctiveness or arbitrariness in BELLA so its value must be given little weight. Applicant notes that there is also another registration granted in International Class 25, for **NICO & BELLA**, Reg. No. 3,291,653 granted September 11, 2007, to a third party. Thus the public has already had to distinguish between two separate entities using BELLA in the clothing field and Opposer is not entitled to a monopoly of a weak and laudatory mark. It is noted that Applicant's first portion of its mark is the name AVA which is much more unusual than BELLA and this will allow a discerning public to view the difference in sources immediately.

6. Applicant's mark is different in sight, sound and meaning from that of Opposer's registrations. Applicant submits that if a sophisticated public understands that CALVIN KLEIN and ANNE KLEIN are not related entities, although both share the same surname and sell women's clothing, and separate registrations have been granted for both these trademarks, then there is room on the Principal Register for Applicant's mark AVA & BELLA. Applicant does not have any overlapping goods with that of Opposer and has restricted its goods to sleepwear, loungewear and robes for night time

use.

WHEREFORE, Applicant prays that this Opposition be denied and that its mark AVA & BELLA be allowed to proceed to registration.

Dated: September 1, 2010

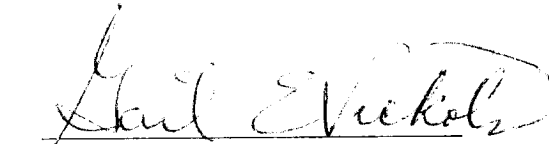
Respectfully submitted,



Gail E. Nickols
Attorney for Applicant

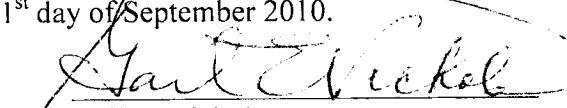
CERTIFICATE OF MAILING

It is hereby certified that a copy of the foregoing Answer and Response to the Notice of Default was served upon Opposer's attorney GORDON & REES LLP at their address of record, 101 West Broadway, #1600, San Diego, CA 92101, by first class mail, this 1st day of September 2010.


Gail E. Nickols

CERTIFICATE OF SERVICE

It is hereby certified that the original of the Answer and Response to the Notice of Default was served upon the TTAB by first class mail at Box TTAB, Comm. of Trademarks, Alexandria, VA 22313-1451 this 1st day of September 2010.


Gail E. Nickols