

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

DUNN

Mailed: December 6, 2010

Opposition No. 91196169

New Wave Group AB

v.

Fortune Fashions Industries  
LLC

**Elizabeth A. Dunn, Attorney (571-272-4267):**

On December 1, 2010, at applicant's request, the Board participated in the parties' discovery conference, which was conducted by phone. The participants were Parna Mehrbani, attorney for opposer, Kurt Koenig, attorney for applicant, and Elizabeth Dunn, attorney for the Board. Both parties have participated in such discovery conferences in Board proceedings, and applicant regularly requests the Board's participation.

**PRIOR COMMUNICATIONS/SETTLEMENT/RELATED PROCEEDINGS**

There has been only preliminary discussion of settlement. While the Board does not become directly involved with settlement discussion between the parties, the

**Opposition No. 91196169**

Board is generally liberal in granting stipulations to suspend proceedings to allow settlement discussions. However, such stipulations should be filed promptly because, absent suspension, the Board expects the parties to adhere to the disclosure, discovery, and trial deadlines already set by the Board. *Atlanta-Fulton County Zoo Inc. v. De Palma*, 45 USPQ2d 1858 (TTAB 1998) (mere existence of settlement negotiations did not justify party's inaction or delay).

Neither party owns a pending application for a related mark. The parties are aware of no related proceedings before the Board or in any court. As set forth in the institution order, the parties must notify the Board promptly if they become parties to another Board proceeding, or a civil action, which involve related marks or issues of law or fact which overlap with this case.

**PLEADED CLAIMS**

Opposer pleads priority and likelihood of confusion between applicant's CRAFT SCHOOL mark for "clothing, namely, shirts, short-sleeved shirts; sports shirts; t-shirts; tee shirts; and tops" (application Serial No. 77829191) and opposer's mark CRAFT for "socks, underwear, trousers, jackets, anoraks, sweatsuits, sweatpants, sweatshirts, sweaters, mittens, caps, mufflers, shorts, vests, t-shirts,

**Opposition No. 91196169**

tennis shirts, and warmup suits" (Registration No. 11765940) and "spectacles and spectacle frames; lifesaving and safety equipment, namely, life jackets, life vests, sailing vests, life lines, flotation jackets, and buoyancy aid jackets and rings" (Registration No. 2963566). Applicant's answer denies the salient allegations of the notice of opposition, but in the conference applicant acknowledged that, in view of opposer's ownership of a valid and subsisting registration for its pleaded mark, there is no issue with respect to opposer's priority. See *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

ACR (ACCELERATED CASE RESOLUTION) PROCEDURES

Both parties indicated interest in using ACR procedures to expedite this proceeding. *Ballet Tech Foundation Inc. v. Joyce Theater Foundation Inc.*, 89 USPQ2d 1262, 1266 fn9 (TTAB 2008) ("ACR is a procedure akin to summary judgment in which parties can receive a determination of the claims and defenses in their case promptly, but without the uncertainty and delay typically presented by standard summary judgment practice. In order to take advantage of ACR, the parties must stipulate that, in lieu of trial, the Board can resolve any material issues of fact ... After the briefs are filed, the Board will issue a decision within fifty days, which

**Opposition No. 91196169**

will be judicially reviewable as set out in 37 CFR §2.145." ). While the parties were not willing to agree to ACR (accelerated case resolution) procedures at the conference, the parties may wish to revisit the issue of ACR after they exchange initial discovery responses or proposed stipulations of fact. *Hewlett-Packard Development Co. v. Vudu Inc.*, 92 USPQ2d 1630, 1634 fn 6 (TTAB 2009) ("In the alternative, the parties may seek Accelerated Case Resolution (ACR) by stipulating, inter alia, to facts on which they agree and to procedures that will allow the parties to make their presentations on the merits of the remaining issues without the need for a formal trial procedure." ).

If the parties need more time to determine if ACR is appropriate, or if they want more information, they should call Elizabeth Dunn at the number listed above.

**DISCLOSURES, DISCOVERY AND TRIAL**

The parties stipulated to service by email. The parties also agreed that the Board's standard protective order does not require modification, and will consider the Board's recommendation that the parties sign the agreement so that its provisions are enforceable after termination of the Board proceeding. The parties also agreed to facilitate each other's preparation of discovery responses by serving

**Opposition No. 91196169**

MS Word versions of discovery requests, and agreed to produce responsive documents in electronic pdf or excel form rather than in hard copies. Inasmuch as some of opposer's witnesses are located in Sweden, the Board advised that, in lieu of depositions on written questions, the parties could consider phone depositions or the submission of testimony by affidavit or declaration. The parties are invited to contact the Board if they wish more information on how to expedite discovery or trial.

Dates remain as set in the Board's order of August 19, 2010.

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