

ESTTA Tracking number: **ESTTA430033**

Filing date: **09/13/2011**

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

Proceeding	91201015
Party	Defendant CHRYSLER GROUP LLC
Correspondence Address	Judith A. Powell KILPATRICK TOWNSEND & STOCKTON LLP 1100 Peachtree Street, NE Suite 2800 ATLANTA, GA 30309 UNITED STATES jpowell@kilpatricktownsend.com,chooker@kilpatricktownsend.com,jash@kilpatricktownsend.com,tmadmin@kilpatricktownsend.com,rgordon@kiltown.com
Submission	Answer
Filer's Name	Judith A. Powell
Filer's e-mail	jpowell@ktslaw.com,chooker@ktslaw.com,jash@ktslaw.com,tmadmin@ktslaw.com,rgordon@ktslaw.com
Signature	/Judith A. Powell/
Date	09/13/2011
Attachments	91201015 Answer to Notice of Opposition.pdf (8 pages)(21431 bytes)

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91201015
)	
CHRYSLER GROUP LLC,)	IMPORTED FROM DETROIT
)	Serial No. 85237193
Applicant.)	International Classes 006, 009, 016, 028,
)	034, & 035

ANSWER TO NOTICE OF OPPOSITION

Applicant, Chrysler Group LLC (“Chrysler” or “Applicant”), respectfully submits its Answer to the Notice of Opposition (the “Notice”) filed by Moda Group LLC (“Moda” or “Opposer”) in the above-referenced matter. Applicant denies any averments not expressly admitted and responds to the Notice as follows:

In response to the opening un-numbered Paragraph of the Notice, Applicant admits that Moda Group LLC is a Michigan limited liability company, doing business as Pure Detroit, and that it has a business address listed at 500 Griswold, Detroit, Michigan, 48226. Applicant further admits that Moda has sold t-shirts and bags bearing Chrysler’s IMPORTED FROM DETROIT™ trademark, beginning after Chrysler filed the subject application and after Chrysler began using the IMPORTED FROM DETROIT™ mark, but is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment that Moda uses the trademark on other “clothing, wearing apparel, or other goods.” Applicant expressly denies that IMPORTED FROM DETROIT™ is merely a “designation,” and avers that it is a trademark. Applicant admits that it has filed U.S. Application Serial No. 85/237,193 to register IMPORTED FROM DETROIT™

(“the Application”), but Applicant denies that Moda will be damaged by the Application or any resulting registration of Chrysler’s IMPORTED FROM DETROIT™ mark for the goods identified in the application. Applicant further denies that any grounds exist for opposition of the Application, but acknowledges that Moda has filed the Notice.

In response to the second un-numbered Paragraph of the Notice, Applicant admits that the owner of the Application is Chrysler Group LLC, a Delaware limited liability company, with a principal office at 1000 Chrysler Drive in Auburn Hills, Michigan 48326 in the metropolitan Detroit area. Applicant admits that the Application was filed February 8, 2011 under Section 1(b) of the Lanham Act and published in the *Official Gazette* on July 12, 2011, and that the Notice was timely filed under the applicable rules of the Trademark Trial and Appeal Board.

In response to the numbered paragraphs of the Notice, Applicant states as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 1 of the Notice and therefore denies same.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 2 of the Notice and therefore denies same.

3. Applicant denies the averments in paragraph 3 of the Notice.

4. Applicant denies the averments in paragraph 4 of the Notice.

5. Applicant denies the averments in the first sentence in paragraph 5 of the Notice. Applicant admits the averments in the second sentence in paragraph 5, except that the second sentence of paragraph 5 misquotes the Application in that it includes the

word “shirts” as recited goods in International Class 016 and includes the word “arrange” as part of the recited services in International Class 035. Applicant avers that the word “shirts” does not appear in the Application and that instead of “arrange,” the Application contains the word “range.”

6. Applicant denies the averments in paragraph 6 of the Notice. Applicant avers that “Detroit” has long referenced both the U.S. automotive industry and the Detroit Metropolitan area and Applicant’s mark does not refer to the confines of the city of Detroit.

7. Applicant admits that it is a Delaware limited liability company having a corporate office located in Auburn Hills, Michigan, that the State of Delaware does not share a city charter, city government, or common county government with the City of Detroit, is geographically distinct from the City of Detroit, does not border the City of Detroit and has U.S. Postal Service zip codes distinct from those assigned the City of Detroit. Applicant denies the remaining averments in paragraph 7. Applicant avers that Auburn Hills is a part of the Detroit Metropolitan area, that the public uses and understands “Detroit” to refer to the Detroit Metropolitan area, as shown by the fact that Auburn Hills is the home of the *Detroit* Pistons, who play all of their home games at The Palace at Auburn Hills, and that the public also uses and understands “Detroit” to refer to the U.S. automotive industry.

8. Applicant denies the averments in paragraph 8 of the Notice.

9. Applicant admits that it uses or intends to use the IMPORTED FROM DETROITTM trademark on all of the goods set forth in the Application, and that Section

1(b) of the Lanham Act is the basis for the Application, but denies the remaining averments in paragraph 9 of the Notice.

10. Applicant denies the averments in paragraph 10 of the Notice.

11. Applicant denies the averments in paragraph 11 of the Notice.

12. The first two clauses of the first sentence of paragraph 12 do not constitute averments and accordingly do not require a response. To the extent a response is necessary, Applicant denies Opposer's "important initial matter" and "in accordance with 37 C.F.R. 2.117(a)" characterizations. For answer to paragraph 12, Applicant admits that it commenced a civil action against Opposer in the U.S. District Court for the Eastern District of Michigan, Civil Action Case No. 11-11074, which action was assigned to the Honorable Arthur J. Tarnow (the "Civil Action"). Applicant admits that Exhibit A contains copies of certain pleadings from the Civil Action as altered by Opposer. Applicant denies the remaining averments in paragraph 12.

13. In answer to the averments in paragraph 13 of the Notice, Applicant admits that Exhibit A to the Notice contains an altered version of Plaintiff's First Amended Complaint, denies Opposer's characterization of Exhibit A to the Notice, and avers that Exhibit A to the Notice speaks for itself.

14. In answer to the averments in paragraph 14 of the Notice, Applicant admits it filed a Motion for Preliminary Injunction in the Civil Action, denies Opposer's characterization of its motion, and avers that the motion speaks for itself.

15. Applicant admits the averments in paragraph 15 of the Notice.

16. Applicant admits that the U.S. District Court for the Eastern District of Michigan held a hearing on the preliminary injunction motion on May 20, 2011, but

denies that Applicant was “afforded every opportunity to proffer evidence supporting their positions including the opportunity to present witness testimony and to cross-examine the witnesses presented.” Applicant avers that during the May 20, 2011 hearing, only one of at least eight witnesses (five fact witnesses and three expert witnesses) present and prepared to testify on behalf of Applicant, was permitted to do so, and instead of holding an evidentiary hearing, the Court required counsel to make statements summarizing the contents of proposed direct testimony and documents to be entered into evidence, and did not allow cross-examination of opposing witnesses.

17. Applicant admits the averments in paragraph 17 of the Notice.

18. Applicant admits that the June 28, 2011 Opinion is attached to the Notice as Exhibit B and avers that the content of the Opinion speaks for itself. Applicant denies Opposer’s characterizations of the Opinion, and accordingly denies the remaining averments in paragraph 18 of the Notice.

19. Applicant admits that the June 28, 2011 Opinion contains preliminary non-binding findings by a federal district court judge. Applicant denies that the issues to which the Opinion relate have been “fully briefed, argued, and addressed” and denies the remaining averments in paragraph 19 of the Notice.

20. Applicant admits that the June 28, 2011 Opinion contains preliminary non-binding conclusions, but avers that the Opinion is applicable only with respect to the preliminary injunction motion to which it related. Applicant expressly denies that the Opinion “constitutes a holding” or “functions as cognizable issue preclusion” with respect to the Notice of Opposition and denies the remaining averments in paragraph 20 of the Notice.

21. In response to Paragraph 21, Applicant repeats and incorporates by reference its answers to Paragraphs 1-20.

22. Applicant denies the averments in paragraph 22 of the Notice.

23. Applicant denies the averments in paragraph 23 of the Notice.

24. Applicant denies the averments in paragraph 24 of the Notice.

25. Applicant denies the averments in paragraph 25 of the Notice.

26. In response to Paragraph 26, Applicant repeats and incorporates by reference its answers to Paragraphs 1-25.

27. Applicant denies the averments in paragraph 27 of the Notice.

28. Applicant denies the averments in paragraph 28 of the Notice.

29. Applicant denies the averments in paragraph 29 of the Notice.

30. Applicant denies the averments in paragraph 30 of the Notice.

31. Applicant denies the averments in paragraph 31 of the Notice.

32. In response to Paragraph 32, Applicant repeats and incorporates by reference its answers to Paragraph 1-31.

33. Applicant denies the averments in paragraph 33 of the Notice.

34. Applicant denies the averments in paragraph 34 of the Notice.

35. Applicant denies the averments in paragraph 35 of the Notice.

36. Applicant denies the averments in paragraph 36 of the Notice.

Applicant denies all other averments in the Notice not expressly admitted herein.

In response to the Prayer for Relief, Applicant denies that grounds exist for opposition. Applicant further denies that Opposer is entitled to any form of relief.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Notice of Opposition fails to state a claim on which relief can be granted.

Second Affirmative Defense

Opposer is barred from any relief by its unclean hands.

Third Affirmative Defense

Applicant reserves the right to assert any additional affirmative defenses as may arise during the course of additional investigation and discovery in this matter.

WHEREFORE, Applicant requests dismissal of the Notice of Opposition and the issuance of a registration of its Application Serial No. 85/237,193 and such other and further relief as may be just and proper.

DATED: September 13, 2011.

Respectfully submitted,

By: /Judith A. Powell/

Judith A. Powell

Charles H. Hooker III

Jessica A. Ash

KILPATRICK TOWNSEND &
STOCKTON LLP

1100 Peachtree Street, Suite 2800

Atlanta, Georgia 30309-4530

Tel: (404) 815-6500

Fax: (404) 815-6555

jpowell@ktslaw.com

chooker@ktslaw.com

jash@ktslaw.com

*Attorneys for Applicant
Chrysler Group LLC*

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91201015
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing ANSWER TO NOTICE OF OPPOSITION is being filed electronically with the TTAB via ESTTA on this day, September 13, 2011.

/Judith A. Powell/
Judith A. Powell

CERTIFICATE OF SERVICE

I hereby certify that the foregoing ANSWER TO NOTICE OF OPPOSITION has been served on Opposer's counsel by depositing a true and correct copy thereof with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Jeffrey P. Thennisch
DOBRUSIN & THENNISCH PC
29 W. Lawrence Street, Suite 201
Pontiac, MI 48342
jeff@patentco.com

DATED: September 13, 2011

/Judith A. Powell/
Judith A. Powell