

**TTAB**

Contact info for applicant

Opposition number 91211778

Application number 77/915498

\*Custom Light Up Caps

856 Jamestown Drive

Rockledge, Fl

32955

1-321-459-3220



\*08-23-2013\*

U.S. Patent and Trademark Office #72

Notice to US Trade mark Board

Opposition Number: 91211778

Lifestyle Brands Corporation Opposer

V.S.

Local Live Bands LLC Applicant

### Notice Of Response

Local Live Bands LLC DBA Custom Light Up Caps filed a Trademark Request in or around January 2010. The Trade Mark name requested is " Vision Wear Caps" or "Vision Wear Hats"

Custom Light Up Caps Trademark name requested " Vision Wear Caps or Vision Wear Hats " is used on black woven or non woven tags with neon green text attached inside **head wear** with light up logo / fiber optic light points or L.E.D. in brim style baseball caps. Under no circumstances is it Custom Light Up Caps intent to use Life Style Brands name or trademark " Vision Street Wear" to market to potential customers or use any merchandise tags with trademark logo resembling or claiming to be associated with the trademark Vision Street Wear / Lifestyle Brand Corporation.

To Local Live Bands LLC DBA Custom Light Up Caps knowledge, Lifestyle Brands or Vision Street Wear trademark does not nor has it ever sold or produced any light up logo or light emitting diode head wear, apparel or otherwise.

Custom Light Up Caps is a USA based representative for overseas production factory's. Our main business is a USA based contact for our customers and production factory's of various styles of products not limited to hear wear. Custom Light Up Caps does not put any tags namely Vision Wear Caps or Vision Wear Hats in anything other than light up head wear styles and possibly some character caps for future customers orders.

In the past Custom Light Up Caps has produced L.E.D. in brim caps and fiber optic light p logo caps with the " Vision Wear Hats " internal tag. Custom Light Up Caps has also been using the name Vision Wear Caps / Hats in various online social networking sites again with no connection to or mention of "Vision Street Wear" or Lifestyle Brands Corp. No company or person has ever contacted Custom Light Up Caps and asked or referred to the name " Vision Street Wear" since or prior to 2010. So the claims of confusion are unfounded and mere speculation. It is highly unlikely anyone would confuse the trademarks as they clearly do not resemble each other in presentation of products, trademark or text coloring and layout.



Photo image of a internal tag on light emitting diode baseball cap.

Clearly these 2 uses of the text Vision Wear do not resemble each other in any way other than the use of the English alphabet. I have sent in images of the Custom Light Up Caps use of the text Vision Wear Caps and Vision Wear Hats. There is clearly no resemblance to the Vision Street Wear logo.

I was sent a proposed contract by Life Style Bands LCC attorney Amy Brozenic. I do not agree to the part that stated I am not able to sell to sporting good stores as Custom Light Up Caps is a factory direct production company not a retail marketing company. We produce caps and hats per our customers design specs. Custom Light Up Caps never has nor does it intend to represent itself as Vision Street Wear.

Kindest Regards

Joe Toth

This is what Custom Light Up Caps tag looks like. These are woven black tags with neon green text that are stitched into baseball caps. There is no way that Custom Light Up Caps use of the words vision or wear look or resemble Vision Street Wears logo or design.

Vision Wear Hats

U.S.A.

Vision Wear Caps

U.S.A.

EXHIBIT B



This is a copy of the agreement Life Style Brands attorney mailed Custom Light Up Caps some months back. It is clear that Life Style Brands is willing to coincide with Custom Light Up Caps using the Vision Wear Caps or Vision Wear Hats trademark as long as Custom Light Up Caps does not represent itself as the Vision Street Wear brand.

Custom Light Up Caps has no intention of representing itself as Vision Street Wear. Our product line that will be using this Vision Wear Caps or Vision Wear Hats trademark is light up logo style baseball caps or various hat styles that offer light up properties.

## TRADEMARK CO-EXISTENCE AGREEMENT

This Trademark Co-Existence Agreement (the "**Agreement**") is entered into this 22nd day of April, 2013 (the "**Effective Date**") and is by and between Lifestyle Brands Corporation, a Canadian corporation having an address of c/o Collective Licensing International, 800 Englewood Parkway, Suite C200, Englewood, CO 80110 ("**Lifestyle Brands**") and Local Live Bands LLC, d/b/a Custom Light Up Caps, a Florida limited liability company having an address of 856 Jamestown Drive, Rockledge, FL 32955 ("**Local Live**"). Lifestyle Brands and Local Live are referred to individually herein as "**Party**" and collectively as the "**Parties**."

### Recitals

A. Lifestyle Brands is the owner of several trademark registrations and pending applications for the mark VISION STREET WEAR, including, but not limited to U.S. Registration No. 1,503,097, U.S. Registration No. 1,506,002, U.S. Registration No. 1,507,260, U.S. Registration No. 1,606,507, U.S. Registration No. 1,606,508, U.S. Application Serial No. 85/425,245, U.S. Application Serial No. 77/867,465, U.S. Application Serial No. 85/036,544, U.S. Application Serial No. 85/726,525 and U.S. Application Serial No. 85/844,881 covering a variety of goods including, but not limited to, footwear, apparel, skateboards and skateboard decks, watches, protective clothing, helmets, protective eyewear and bags (collectively referred to as the "**VISION STREET WEAR Marks**").

B. Local Live filed U.S. Application Serial No. 77/915,498 on January 20, 2010 for the mark VISION WEAR covering the following goods: "hats and caps featuring light emitting diodes (l.e.d.) and fiber optics to provide light" in International Class 025 (the "**VISION WEAR Mark**").

C. Lifestyle Brands filed an Extension of Time to Oppose the VISION WEAR Mark with the Trademark Trial and Appeal Board of the United States Patent and Trademark Office (the "**Potential Opposition**").

D. In order to resolve the Potential Opposition and to avoid marketplace confusion, Lifestyle Brands and Local Live have reached an agreement regarding issues related to the use and registration of the VISION WEAR Mark.

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated into this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### 1. **No Likelihood of Confusion**

A. So long as Local Live's use of the VISION WEAR Mark conforms to the terms of this Agreement, there should be no likelihood of confusion by consumers. In the event that, notwithstanding the foregoing, actual confusion develops in the marketplace, the Parties will take all reasonable steps necessary to eliminate such confusion.

B. The Parties agree that this settlement does not constitute and shall not be interpreted as an admission of liability or lack of merit of any Party's claims or defenses.

#### 2. **Amendment of Application**

Within ten (10) days of the Effective Date, Local Live shall file a Post-Publication Amendment with the United States Patent and Trademark Office (the "**USPTO**") to amend the goods listed in U.S. Application Serial No. 77/915,498 to the following:

Hats and caps featuring light emitting diodes (l.e.d.) and fiber optics to provide light, excluding hats and caps for skateboarding, surfing, swimming, bicycling, or BMX racing.

and not sold through skateboarding retailers, skateboarding specialty stores, or sporting goods stores.

A copy of the Post-Publication Amendment form is attached hereto as **Exhibit A**.

**3. Restrictions on Use and Registration**

A. Local Live agrees that any and all use of the name, trademark, or designation "VISION WEAR" shall be limited to "hats and caps featuring light emitting diodes (l.e.d.) and fiber optics to provide light" (the "**Local Live Goods**").

B. Local Live agrees that it will not provide, sell, distribute, manufacture, or license the Local Live Goods that bear, display, or use in any way the VISION WEAR Mark to skateboarding retailers, skateboarding specialty stores, or sporting goods stores.

C. Local Live agrees not to file any new trademark applications for the mark VISION WEAR, or marks incorporating the term "VISION" in International Classes 025, 028, 014, 016, 018, or 009.

D. Local Live agrees not to display the VISION WEAR Mark in a manner similar to Lifestyle Brand's stylization of the VISION STREET WEAR Marks, which includes, but is not limited to, a box that surrounds the wording, each wording shown one underneath the other and one word appearing inside a rectangle. Local Live further agrees not to use the color combination of red, black and white in its display of the VISION WEAR Mark. Current examples of Lifestyle Brand's stylized use of the VISION STREET WEAR Marks are attached hereto as **Exhibit B**.

E. Local Live agrees not to oppose, contest, petition to cancel, or otherwise object in any form or manner to the use or registration of the VISION STREET WEAR Marks, any future applications or registrations owned by Lifestyle Brands for the mark VISION STREET WEAR, or any other VISION formative marks owned by Lifestyle Brands.

**4. Consent to Use and Registration**

Subject to the provisions of Paragraphs 2 and 3 above, Lifestyle Brands hereby consents to and shall not in the future complain of, oppose, seek to cancel, or otherwise object to Local Live's use of the VISION WEAR Mark, U.S. Application Serial No. 77/915,498, or the resulting registration of U.S. Application Serial No. 77/915,498.

**5. Territory.** The Territory of this Agreement shall be worldwide.

**6. Further Cooperation.** Each Party hereto covenants and agrees to prepare, execute, acknowledge, file, record, publish and deliver to the other Party hereto such other letters of consent, instruments, documents, and statements, and take such other action as may be reasonably requested in the discretion of the requesting Party to carry out more effectively the purposes of this Agreement or to overcome refusals issued by various trademark offices around the world from time to time. Each Party shall pay its own costs incurred to comply with the request.

**7. Release.** Upon the execution of this Agreement, each Party, and its subsidiaries, related companies, successors, assigns, affiliates and any others in privity with or claiming under them, irrevocably releases and forever discharges the other Party and its affiliates, partners, divisions, departments, directors, officers, employees, agents, shareholders, accountants and attorneys and their successors and assigns from all claims, demands, causes of action, costs, expenses, attorney's fees, liabilities, indemnities, claims over, and any and all obligations relating to or arising out of the use by the Party of their respective marks up until the Effective Date of this Agreement.

8. **Clarification to Third Parties.** In the highly unlikely event that either Party is ever mistakenly contacted by a third party looking to reach the other Party, the contacted Party will direct the third party to the proper Party and notify the other Party of the mistaken contact within 10 (ten) days of the mistaken contact.

9. **Miscellaneous**

A. **Notices.** All notices, requests, consents, demands, approvals and other communications, including the service of process, hereunder shall be deemed to have been duly given, made or served if in writing and delivered personally or sent by overnight carrier that requires the addressee to acknowledge receipt thereof to the respective Parties as set forth below or later amended in writing. Informal communications between the Parties may be properly transmitted by facsimile or e-mail.

If to Lifestyle Brands:                   Lifestyle Brands Corporation  
  c/o Collective Licensing International  
  Attn: VP, Finance & Operations  
  800 Englewood Parkway, Suite C200  
  Englewood, CO 80110

If to Local Live:                         Local Live Bands LLC  
  DBA Custom Light Up Caps  
  Attn: Joseph Toth, President  
  856 Jamestown Drive  
  Rockledge, FL 32955

B. **Effect of Headings.** The subject headings of the paragraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

C. **Entire Agreement; Modification, Waiver.** This Agreement contains the entire agreement between the Parties relating to the subject matter of this Agreement, and supersedes and replaces any and all prior negotiations, letters, or proposed agreements, written or oral. This Agreement may not be amended, altered or modified except by a writing signed by both Parties. No waiver of any breach, term, or condition of this Agreement shall be deemed or constitute a waiver of any subsequent breach or of any other term or condition, whether or not similar, nor shall any waiver constitute a continuing waiver.

D. **Related Companies and Successors.** Each term, covenant, and condition of this Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective successors, assigns, parents, subsidiaries, employees, affiliates, licensees and related entities.

E. **Authority to Execute.** Each Party represents and warrants to the other that it has all power and authority necessary to enter into this Agreement and to perform its obligations hereunder and that this Agreement does not violate or conflict with any other agreement or understanding to which it is a party or by which it is bound. Each person executing this Agreement on behalf of any Party or entity hereby represents and warrants that he or she has the full power and authority to do so.

F. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of the Agreement and which together shall constitute one and the same instrument. An executed Agreement may be delivered to the other Party by facsimile or e-mail, and such facsimile or e-mail copy shall be fully enforceable as the original.

G. **Severability.** In the event that any provision hereof is deemed to be illegal or unenforceable, such a determination shall not affect the validity or enforceability of the remaining provisions hereof, all of which shall remain in full force.

H. Each Party to Bear Its Own Costs. Each Party will bear its own costs and fees incurred in connection with the negotiation and preparation of this Agreement.

I. Construction. No provision of this Agreement shall be construed in favor of or against any Party on the ground that such Party or its counsel drafted the provision.

J. Governing Law and Jurisdiction. The construction and interpretation of this Agreement and any disputes arising hereunder or related thereto (whether for breach of contract, tortious conduct or otherwise) shall be governed by and construed in accordance with the laws of the State of Colorado without reference to the conflict of laws principles thereof. Any legal actions, suits, or proceedings arising out of or relating to this Agreement (whether for breach of contract, tortious conduct or otherwise) shall be subject to the non-exclusive jurisdiction of the courts of Colorado, and the parties to this Agreement hereby accept and submit to the personal jurisdiction of the foregoing courts, with respect to any legal actions, suits or proceedings arising out of this Agreement including any litigation regarding breach thereof, or the interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties, through their duly appointed and authorized representatives, have executed this Agreement as of the Effective Date.

**LIFESTYLE BRANDS CORPORATION**

**LOCAL LIVE BANDS, LLC  
DBA CUSTOM LIGHT UP CAPS**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Matt Ballard

Printed Name: \_\_\_\_\_

Title: VP, Finance & Operations

Title: \_\_\_\_\_

Date: April \_\_, 2013

Date: \_\_\_\_\_

**EXHIBIT A**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Mark:	VISION WEAR	)	
Filed:	January 20, 2010	)	
Applicant:	Local Live Bands LLC	)	Serial No.: 77/915,498
	DBA Custom Light Up Caps	)	
Examining Attorney:	Morgan Meyers	)	
	Law Office 117	)	

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**Post-Approval/Publication/Post-Notice of Allowance (NOA) Amendment**

To the Commissioner for Trademarks:

Application serial no. 77915498 (VISION WEAR, see mark) has been amended as follows:

**EXPLANATION OF FILING**

The amendment to the recitation of goods is being filed in response to the Extension of Time to Oppose filed by Lifestyle Brands Corporation.

**CLASSIFICATION AND LISTING OF GOODS/SERVICES**

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 025 for hats and caps featuring light emitting diodes (l.e.d.) and fiber optics to provide light

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 01/01/2010 and first used in commerce at least as early as 01/01/2010, and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~hats and caps featuring light emitting diodes (l.e.d.) and fiber optics to provide light~~; hats and caps featuring light emitting diodes (l.e.d.) and fiber optics to provide light excluding hats and caps for skateboarding, surfing, swimming, bicycling, or BMX racing, and not sold through skateboarding retailers, skateboarding specialty stores, or sporting goods stores

Class 025 for hats and caps featuring light emitting diodes (l.e.d.) and fiber optics to provide light excluding hats and caps for skateboarding, surfing, swimming, bicycling, or BMX racing, and not sold through skateboarding retailers, skateboarding specialty stores, or sporting goods stores

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 01/01/2010 and first used in commerce at least as early as 01/01/2010, and is now in use in such commerce.

Respectfully submitted,

By: \_\_\_\_\_

Name: Joseph Toth

Position: President

Date: \_\_\_\_\_

EXHIBIT B

