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Filing date: **01/21/2014**

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

Proceeding	91212996
Party	Plaintiff 117 NE 1st Avenue LLC
Correspondence Address	KEESONGA GORE MINOTT GORE PA 201 S BISCAYNE BLVD, SUITE 2800 MIAMI, FL 33131 UNITED STATES kjg@minottgore.com, admin@minottgore.com
Submission	Motion to Amend Pleading/Amended Pleading
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Date	01/21/2014
Attachments	Kai Tak Motion To Amend Notice of Oppositon.pdf(80186 bytes) Kai Tak Amended Notice of Opposition.pdf(94311 bytes)

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

117 NE 1 st Avenue LLC,	:	
Opposer,	:	
v.	:	Opposition No. 91212996
	:	
Pearl Enterprises LLC	:	
Applicant.	:	

OPPOSER’S MOTION TO AMEND NOTICE OF OPPOSITION

Opposer, 117 NE 1st Avenue LLC, through its attorneys, hereby moves that the Trademark Trial and Appeal Board (the “Board”) grant leave for Opposer to amend its Notice of Opposition pursuant to Federal Rules of Civil Procedure (“FRCP”) 15(a) and 37 CFR § 2.107, and reset the parties’ trial periods accordingly. Opposer has recently discovered details indicating Applicant’s willful submission of a false statement of use and perpetration of fraud upon the United States Patent and Trademark Office (“USPTO”). Unaware of these grounds at the time it filed the Notice of Opposition, Opposer now respectfully requests that the Board grant leave to amend its Notice of Opposition to add claims of nonuse and fraud upon the USPTO.

Respectfully submitted,

By /Keesonga Gore/

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Attorneys for Opposer

Encl: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent, via email, to Christopher Kinkade, Esq., at ckinkade@foxrothschild.com, Fox Rothschild LLP, Princeton Pike Corporate Center, 997 Lenox Drive, Building 3, Lawrenceville, New Jersey, on this 21st day of January, 2014.

 /Keesonga Gore/
Keesonga Gore

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

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Opposer,	:	
v.	:	Opposition No. 91212996
	:	
PEARL ENTERPRISES LLC,	:	
Applicant.	:	

AMENDED NOTICE OF OPPOSITION

Opposer, 117 NE 1st Avenue LLC (“Opposer”), a Florida limited liability company with an address at P.O. Box 398388, Miami Beach, Florida 33239, believes that it is or will be damaged by the registration of the trademark KAI TAK (the “Disputed Mark”), the subject of U.S. application Serial No. 86,002,539 (the “Application”), filed by Pearl Enterprises LLC, a New Jersey limited liability company located at 379 East 7th Street, Lakewood, New Jersey 08701 (“Applicant”). Opposer hereby opposes registration of the Disputed Mark under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. § 1063.

As grounds for the opposition, Opposer alleges as follows:

1. Opposer is the owner of the pending U.S application Serial No. 86/066,384 for the KAI TAK & Design mark covering “jewelry” in class 014 (“KAI TAK & Design Mark”).
2. Since at least as early as 2010, Opposer has used the KAI TAK & Design Mark in connection with jewelry incorporating acupressure stimulation technology.
3. By reason of Opposer’s marketing, advertising and promotion efforts, the KAI TAK & Design Mark has become uniquely associated in the United States with Opposer and its goods.
4. Notwithstanding Opposer’s use of the KAI TAK & Design Mark and the reputation of its mark among U.S. consumers, on July 3, 2013, Applicant filed U.S application Serial No. 86/002,539 for the trademark KAI TAK covering “apparatus for acupressure therapy; apparatus for magnet therapy” in class 10.

5. Opposer used, and acquired trademark rights in, the KAI TAK & Design mark long before the Applicant applied to register or began using the Disputed Mark.
6. Opposer's rights in its KAI TAK & Design Mark are senior to any trademark rights the Applicant may claim in the Disputed Mark.
7. The Disputed Mark is highly similar to the Opposer's mark in sight, sound and commercial impression.
8. The goods identified in the Application are closely related and/or identical to the Opposer's goods.
9. The Disputed Mark so resembles Opposer's KAI TAK & Design Mark and is being used in connection with closely related and/or identical goods so as to be likely to cause confusion or to cause mistake or to deceive, in violation of 15 U.S.C. § 1052.
10. Upon information and belief, Applicant was aware of Opposer's KAI TAK & Design Mark prior to the filing date of the Application and prior to the date on which the Applicant adopted or began using the Disputed Mark.
11. Upon information and belief, Applicant willfully submitted false statements concerning its pending trademark application, Serial No. 86/002,539, perpetrating fraud on the United States Patent and Trademark Office ("USPTO"), and violation of 18 U.S.C. § 1001.
12. Upon information and belief, Applicant willfully intended to deceive the public regarding the source of its goods offered in the marketplace in violation of 15 U.S.C. § 1125.
13. Upon information and belief, Applicant willfully submitted a fraudulent "specimen" to support its claim of use in commerce in the United States.
14. Upon information and belief, Applicant's specimen in its pending trademark application, Serial No. 86/002,539, is actually an image of Opposer's product.
15. Upon information and belief, Applicant has not used the Disputed Mark in connection with the goods indicated in its pending trademark application, Serial No. 86/002,539.
16. Opposer has not authorized Applicant to use or register the Disputed Mark.

17. Opposer believes it will be damaged by the registration of the Disputed Mark.

18. By reason of the foregoing, Applicant is not entitled to register the Disputed Mark herein opposed.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied.

Dated: **January 21, 2014**

Respectfully submitted,

 /Keesonga Gore/

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