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

Proceeding	91222391
Party	Defendant Hamptons Glow, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

S&G HAMPTON SUN, LLC,

Opposer/Petitioner,

v.

Opposition No. 91222391
(Consolidated with Cancellation No. 92062549)

HAMPTONS GLOW, LLC

Applicant/Registrant.

TRIAL BRIEF OF APPLICANT/REGISTRANT HAMPTONS GLOW, LLC

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TABLE OF CONTENTS

I. Preliminary Statement3

II. Procedural History4

III. Description of Record5

IV. Statement of Facts & Arguments10

V. Conclusion22

I. Preliminary Statement

HAMPTONS GLOW (Applicant/Registrant) is in the business of developing; formulating & selling anti-aging sunless, self-tanning, spray tanning, gradual tanning & body care products based on the HAMPTONS TANNING® spray tanning business, established 2010 (Registration No. 4,228,045 ; Reg. Date: Oct. 16th, 2012 in class 44) – which originated in East Hampton, New York. The HAMPTONS GLOW trademark (Registration No. 4,740,353) is based upon client requests and market demand for high quality; high performance, anti-aging self-tanning & body care products

Hamptons Glow products have received significant market response, acceptance and goodwill towards the brand. With sales growing each year very strong reorders. The products are currently distributed on our own website (www.HamptonsGlow.com), Amazon.com, Jet.com, Wal-Mart.com, Ebay, Wish.com & small boutique retailers in New York, California & Texas. Hamptons Glow regularly receives the “Amazons Choice” designation on Amazon.com based on sales, positive product reviews from buyers & rate of reorders.

Since launching, Hamptons Glow products have received numerous awards, product picks & recognition by important press outlets such as InStyle Magazine, As If Magazine, models & beauty bloggers.

Petitioner/Opposer’s claims that the HAMPTONS GLOW mark will cause consumer confusion & dilution are unwarranted. The strong evidence supported by the Federal Trademark Statutes &

Rules will show that their request for cancellation of Registration No. 4,740,353 and opposition of Application Serial No. 86/402,060 are inappropriate and instituted without real grounds.

II. Procedural History

- February 26, 2014: Hamptons Glow files application to register the Hamptons Glow mark & design for Class 3 under the Trademark Act, 15 U.S.C. §§ 1051 (b) (1)
- June 11, 2014: Petitioner/Opposer issues a cease & desist letter to Applicant/Registrant demanding abandonment of the application stating: “In the event you fail to withdraw your application and the Patent & Trademark Office approves the Hamptons Glow application, S&G Hampton Sun LCC intends to file an opposition to the registration (of) the mark.”
- September 18, 2014: HG received notice of the following notice & instructions from the examining attorney at the USPTO:
 1. **“DATABASE SEARCH:** The trademark examining attorney has searched the USPTO’s database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).”
 2. Recommendation from examining attorney & completed by Hamptons Glow:
“DISCLAIMER: No claim is made to the exclusive right to use “HAMPTONS” apart from the mark as shown” *See* 15 U.S.C. §1056(a); TMEP §§1213, 1213.08(a)(i).
- February 25, 2015: HG files Statement of Use in connection with goods listed on application, with date of first use in commerce of June 23, 2014. U.S. Trademark Reg. No. 4,740,353 issued on May 19th, 2015 (the HAMPTONS Glow Registration.) No

opposition filed by HAMPTON SUN (Petitioner/Opposer) during the opposition period despite demanding letter issued June 11, 2014 indicating otherwise.

- September 22, 2014: HAMPTONS GLOW files second application to register the mark for class 4 goods under Trademark Act, 15 U.S.C. §§ 1051 (b) (1), (Application Ser. No. 86/402,060)
- February 17, 2015: The HG Application published for opposition in the Official Gazette. S&G files extension for time to oppose.
- June 16, 2015: S&G files Notice of Opposition for class 4 application (Opposition No. 91222391). HG files answer July 8, 2015.
- November 2nd, 2015: S&G files petition for cancellation against the HAMPTONS GLOW registration forming the basis of the consolidated action. (Cancellation 92062549). HG files answer to Petition to Cancellation November 16, 2015.
- December 4, 2015: HG consents to S&G filing a motion to consolidate Opposition No. 92111391 and Cancellation No. 92062549.
- December 22, 2015: Board grants motion to consolidate under parent case Opposition No. 91222391.

III. Description of Record and Conclusive Detail

A. HG relies on the materials submitted in connection with the Trial Testimony Declaration submitted October 23rd, 2017 & the Notices of Reliance filed on February 7th, 2018. Pursuant to Rule 2.122(e) of the Trademark Rules of Practice, 37 C.F.R. §2.120(k), and TBMP §704.10.

This Notice of Reliance covers the Petitioner's responses from the Registrant/Applicant's First Requests for Admissions, specifically, Page 4, Request #1 & #2. (Exhibit 13).

This relates to the Petitioners/Opposers admission that the Hamptons Glow registered class 3 trademark and application for class 4 is a fanciful, distinctive design of a "tan girl in a blue bikini with black sunglasses & hat" and the Hampton Sun trademark consists of only two words in block letters.

B. HG also relies on the materials submitted in connection with the Trial Testimony Declaration submitted October 23rd, 2017 & the Notices of Reliance filed on February 7th, 2018. Pursuant to Rule 2.122(e) of the Trademark Rules of Practice, 37 C.F.R. § 2.122(e), and TBMP § 704.08 (a)&(b).

Within this Notice of Reliance:

(Exhibit 4 in Final Trial Testimony) Illustrates significant market response, acceptance & goodwill towards the Hamptons Glow brand by important press outlets & influential beauty bloggers.

- Printout of press mention in InStyle Magazine, February 2015

- Printout of press mention in AS if Magazine, Fall 2015, Issue 7

- Printout of website KD Hamptons Diary of the Hamptons, published January 14, 2016, printed on or about October 23, 2017 accessed at <http://www.kdhamptons.com/hamptons-glow/>

- Printout of website Surfing & Sequins Hamptons Lifestyle Blog published December 14th, 2015, printed on or about January 15, 2016 accessed at <https://surfingandsequins.com/>

- Printout of website Brooke's Look, Lifestyle, Fashion & Beauty Blog, published December 23, 2015, printed on or about January 15, 2016 accessed at <https://www.brookeslook.com/>

- Printout of website Insider Beauty, Beauty Blog, published November 11, 2015, printed on or about January 15, 2016 accessed at <http://www.insiderbeautybuzz.com/insiderbeautybuzz/got-a-gorgeous-faux-glow-with-extra-beauty?rq=hamptons%20glow>

- Printout of website Klischee, Beauty & Lifestyle Blog based in Germany, Published September 17, 2015, printed on or about January 15, 2016 accessed at <http://klischees.blogspot.com/search?q=hamptons+glow>

(Exhibit 6) Registrant/Applicant will rely on the printouts in this exhibit to illustrate successful distribution channels for Registrant/Applicant, Hamptons Glow.

In addition, Registrant/Applicant will rely on the printouts to show the Board that consumer demand for Hamptons Glow products has extended well beyond their own website and are successfully selling into that demand in the appropriate channels.

In the current retail climate consumers typically expect most brands (especially in the beauty category) to move in the usual channels of trade, which include large, online marketplaces such as Amazon.com, EBAY.com & Jet.com, among others.

1. Hamptons Glow website printed on or about October 23, 2017 accessed at <https://www.hamptonsglow.com/>

2. Online retailer Amazon printed on or about October 23, 2017 accessed at https://www.amazon.com/Hamptons-Glow-Tanning-Firming-Gorgeous/dp/B00M0Z508U/ref=sr_1_2_a_it?ie=UTF8&qid=1518125388&sr=8-2&keywords=hamptons%2Bglow&dpID=41weNLnURRL&preST=_SY300_QL70_&dpSrc=srch&th=1

3. Online retailer Jet printed on or about October 23, 2017 accessed at <https://jet.com/search?term=hamptons%20glow>

4. Online retailer Wish, printed on or about October 23, 2016 accessed at <https://www.wish.com/c/5a58d2a332f70a6ed9b94e0a>

5. Online retailer EBAY, printed on or about October 23, 2017 accessed at https://www.ebay.com/sch/i.html?_from=R40&_trksid=p2380057.m570.l1313.TR0.TRC0.H0.Xhamptons+glow.TRS0&_nkw=hamptons+glow&_sacat=0

6. Online retailer Amanda Mills Los Angeles (AMLA) printed on or about October 23, 2017 accessed at <https://www.amandamillsla.com/index.php/product-category/beauty/>

(Exhibit 14) Registrant/Applicant will rely on the printout to show that a company is already manufacturing and selling goods using the term “Hampton or Hamptons” as a characteristic of their brand name, marketing & advertising.

These goods would fall under the Class 4 trademark category and the above further underscores Petitioner’s frivolous opposition of Registrant/Applicant’s Application for a Class 4 mark.

Printout of pages from the website of Hamptons Handpoured, a candle manufacturer & retailer based in the Hamptons. Printed on or about October 23, 2016 and accessed at <http://www.hamptonshandpoured.com/>.

C. HG also relies on the materials submitted in connection with the Trial Testimony Declaration submitted October 23rd, 2017 & the Notices of Reliance filed on February 7th, 2018. Pursuant to Rule 2.122(e) of the Trademark Rules of Practice, 37 C.F.R. § 2.122(e), and TBMP § 704.11.

Within this Notice of Reliance:

(Exhibit 5) A printout of pages from emails exchanged with Modern Candle, a candle manufacturer in California for manufacturing, production specifics & pricing. The first communication dated September 22, 2014 requests that the manufacturer consider the logo of the girl in the blue bikini will be imprinted on the side of the container. Exhibit 5 also contains a true and correct copy of the Hamptons Glow trademark application for goods in Class 4. This communication shows serious intent to use the mark in class 4 currently under application.

(Exhibit 7) A printout of the cease & desist letter dated June 11, 2014 sent to Registrant/Applicant. This document shows that Petitioner and their lawyers were clearly tracking the trademark application for Class 3 and as stated in this letter, they would file an opposition to the Class 3 Mark if the Patent & Trademark office approved the application.

This exhibit shows letter shows that the Petitioner and their attorneys in fact, did not oppose the application and allowed it register.

(Exhibit 11) This copy of a comprehensive search & clearance report conducted by Coresearch, searching for “Hampton” or “Hamptons for goods and services in Trademark Classes 3, 4 & 44. This report shows that 947 records were located of businesses that have filed for, or have currently registered marks in Classes 3, 4 & 44 containing either the word “Hampton” or “Hamptons”, indicating common and active use of the geographical descriptors “Hampton” & “Hamptons” for Hamptons Glow as well as other existing businesses in classes 3, 4 or 44.

IV. Statement of Facts & Argument

Petitioner/Opposer has no legal or factual basis to challenge the Hamptons Glow Registered Mark or Application.

A.) Fact:

The HAMPTONS GLOW logo & registered trademark were directly inspired by the long existing Hamptons Tanning logo (see Exhibit 1 & 3 in final testimony), and trademark. The mark

was created by a designer as a caricature of me (Rachel Thompson) in a blue bikini since I am a former bikini competitor, having started my tanning business in a beach community and still love and identify with bikini's & the beach lifestyle.

While in The Hamptons spray tanning my customers for my Hamptons Tanning brand, my clients continuously asked for advice about skincare, anti-aging and healthy lifestyle tips from me. Also, what skincare and self-tanning products they should be using & how to best incorporate them into their daily beauty routines. I founded Hamptons Glow in response to this market demand by my Hamptons Tanning clients for sunless & body products that offered high quality performance and ingredients with anti-aging benefits.

I replaced the word "Tanning" with "Glow" for my product line because this would give me more flexibility to introduce future beauty & wellness products or line extensions that may not be sunless tanning in nature but still fit in with the anti-aging lifestyle & existing product range.

The "Beauty Is A Lifestyle"® (Registration No. 4,851,995) (exhibit 2 in Trial Testimony) is my company tag line and refers to beauty radiating from within, or the "Glow" portion of the mark which is attributed to good nutrition, regular exercise & a healthy lifestyle – including staying out of the sun & using only sunless products rather than risking skin damage and skin cancer. This mark is also owned by Hamptons Glow, LLC.

Argument:

1. The Hamptons Glow description for both the Registered Class 3 & Application pending for Class 4 trademark & design is as follows:

“The mark consists of A tan girl with black hair wearing a blue bikini, black sunglasses and a blue and light blue hat. The color tan is reflected in the color of her skin. The girl design element sits above a wavy blue line. Just below the wavy blue line design element is the wording "HAMPTONS GLOW". The word "HAMPTONS" text is represented in the color black and the word "GLOW" text is represented in the color gold. The word "HAMPTONS" appears in black text just above the word "GLOW" which appears in gold text. The blue wavy line design element sits between the girl design element and the words "HAMPTONS GLOW".

The above proves that the Hamptons Glow Trademark is a direct extension of the existing Hamptons Tanning logo and trademark. (see Exhibit 3 in Final Testimony)

2. The Hamptons Glow products are a direct extension of the Hamptons Tanning spray tanning service business and are not an infringement of Petitioner/Opposer.

3. The dominant word “Glow” in the mark refers to beauty radiating from within, a healthy lifestyle which includes staying out of the sun and the use of sunless & self tanning products. The word “Glow” is also a reference to the Beauty Is a Lifestyle mark also owned by Hamptons Glow, LLC & used in advertising, marketing and some packaging.

B.) Fact:

Almost immediately after launching the Hamptons Glow products in June of 2014, my spray tanning clients & product customers began asking if I would manufacture an aromatherapy candle to give as gifts or housewarming. I began speaking to vendors & filed a Trademark application for Hamptons Glow candles (Application No. 86/402,060) on September 14, 2014. EXHIBIT 5 in the Final Testimony contains USPTO application for Hamptons Glow Class 4 & a small sample of back up emails with Modern Candle, a manufacturer in California discussing the project.

Argument:

1. Petitioner's opposition of Registrant/Applicant's Class 4 Application No. 86/402, 060 is frivolous & overly aggressive. Once again the geographical element is disclaimed in the application & mark design shows no resemblance to the Petitioner/Opposer. In addition, the word "Hamptons" is not the dominant element of the mark.

Currently a company based in the Hamptons called HAMPTONS HANDPOURED already manufactures & sells candles and has been operating since at least 2012. Please refer to a sample of their website (EXHIBIT 14 in the Final Testimony).

The owner, Brittany Torres manufactures & sells candles under the brand name HAMPTONS HANDPOURED. These types of goods would be registered under Class 4 and given that she was first to market and has been manufacturing and selling candles long before the Petitioner or even myself, Registrant/Applicant she would be entitled to Common Law Trademark Rights in class 4.

The above proves that Petitioner/Opposer has no basis for their opposition of my Class 4 Application.

C.) Fact:

Well established U.S. trademark law states that geographic terms such as Hamptons, New York, Paris, Los Angeles, etc. or signs are not registrable as trademarks since they are geographically descriptive.

Argument & Supporting Federal Trademark Statute & Rule:

As outlined in the Federal Trademark Statutes and Rules, July 2017:

(15 U.S.C. §1052) Trademarks registrable on the principal register; concurrent registration

“No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(e) Consists of a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them, except as indications of regional origin may be registrable under section 1054 of this title, (3) when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them, (4) is primarily merely a surname, or (5) comprises any matter that, as a whole, is functional.”

According to the Trademark Manual of Examining Procedure, October 2017:

1210.06(a) Marks That Include Primarily Geographically Descriptive Terms Combined With Additional Matter

“A disclaimer is appropriate where the geographic component is a separable feature of the mark, and the composite mark includes an inherently distinctive, non-disclaimed component (e.g., coined, arbitrary, fanciful, or suggestive wording or design). The composite mark must include a non-disclaimed component because a mark cannot be registered if all the components have been disclaimed.”

D.) Fact:

On September 18, 2014, the USPTO Examining Attorney, C. Dionne Clyburn handling the Hamptons Glow Class 3 application, now Registration No. 4,740,353 contacted me and asked that I disclaim the word “Hamptons” as this is a geographical indicator.

I agreed to do so and based on her recommendation and added the following disclaimer to the application: “No claim is made to the exclusive right to use “Hamptons” apart from the mark as shown.

Please refer to the Examiners Amendment in EXHIBIT 9 of Final Trial Testimony. It is also important to note that opposed Application Serial No. 86/402,060 for the Hamptons Glow Class 4 mark that the geographical indicator “Hamptons” is also disclaimed. (See exhibit 10 in Final Trial Testimony)

Argument & Supporting Federal Trademark Statutes & Rule:

Trademark Manual of Examining Procedure, October 2017:

1213 Disclaimer of Elements in Marks

15 U.S.C. §1056 Disclaimers

Trademark Act §6(a), 15 U.S.C. §1056(a), provides for the disclaimer of "an unregistrable component of a mark otherwise registrable."

(a) The Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

(b) No disclaimer, including those made under subsection (e) of section 1057 of this title, shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.

"A disclaimer is a statement that the applicant or registrant does not claim the exclusive right to use a specified element or elements of the mark in a trademark application or registration. A disclaimer may be included in an application as filed or may be added by amendment, e.g., to comply with a requirement by the examining attorney."

"The purpose of a disclaimer is to permit the registration of a mark that is registrable as a whole but contains matter that would not be registrable standing alone, without creating a false impression of the extent of the registrant's right with respect to certain elements in the mark. As stated in *Horlick's Malted Milk Co. v. Borden Co.*, 295 F. 232, 234 (D.C. Cir. 1924) (citing *Estate of P. D. Beckwith, Inc. v. Comm'r of Pats.*, 252 U.S. 538, 544 (1920)):"

"As used in trade mark registrations, a disclaimer of a component of a composite mark amounts merely to a statement that, in so far as that particular registration is concerned, no rights are being asserted in the disclaimed component standing alone, but rights are asserted in the composite; and the particular registration represents only such rights as flow from the use of the composite mark."

Sprague Electric Co. v. Erie Resistor Corp., 101 USPQ 486, 486-87 (Comm'r Pats. 1954).

E.) Fact:

Applicant/Registrant HAMPTONS GLOW & Petitioner/Opposer's marks are not confusingly similar. They are not phonetic equivalents, do not sound similar, are not similar in appearance, do

not include any similar design elements & commercial meaning & impression is not similar.

Argument:

The unique characteristics of the Registrant/Applicant's HAMPTONS GLOW mark as the fanciful, multi-color design of a girl in a blue bikini with black hat and sunglasses as the dominant design element stand in stark contrast to the Petitioner/Opposer's non-distinctive, generic HAMPTON SUN mark which consists of only two words & is text only. See EXHIBIT 12 of the Final Trial Testimony.

On February 6th, 2017 Registrant/Applicant received their FIRST REQUEST FOR ADMISSION from the Petitioner/Opposer. On page 4 of that document: Request No. 1 Petitioner/Opposer admits that the HAMPTONS GLOW registered class 3 & Application for class 4 mark is: "consistent with the description of the mark contained in Registration No. 4,740,353 and Application Ser No. 86/402, 060..."

Request No. 2 on the First Request for Admissions document, Petitioner "S & G" admits that the trademark registration and application for HAMPTON SUN consist of two words in block letters."

Please refer to the Registrant/Applicant's FIRST REQUEST FOR ADMISSIONS document in EXHIBIT 13 of Final Trial Testimony.

F.) Fact:

Petitioner/Opposer had clear notice of the application for the now registered Class 3 mark as evidenced by their cease and desist letter dated June 11, 2014 attached hereto as EXHIBIT 7.

Petitioner and their lawyers were clearly tracking the application as the cease & desist letter states as follows: "In the event that you fail to withdraw your application and the Patent and Trademark

Office approves the Hamptons Glow application, S&G Hampton Sun LCC intends to file an opposition to the registration (of) the mark”.

Petitioner and their lawyers did not oppose the application even though they were aware of the application and were tracking the application process and the opposition period.

I received the USPTO Notice of Publication October 8, 2014. I received the USPTO Trademark Official Gazette Publication Confirmation on October 28, 2014. The Notice of Allowance was issued December 23, 2014 with no opposition from the Petitioner/Opposer.

Please refer to the USPTO Notice of Publication, USPTO Trademark Official Gazette Publication Confirmation & The Notice of Allowance in EXHIBIT 8 of the final testimony document.

Argument:

Petitioner/Opposer has exhibited a pattern of unfair litigation in the past, employing abusive tactics against other small business, which may not have the time, resources or expertise to fight back against their claims of infringement, knowing that most will simply give up.

This unwarranted, threatening Cease and Desist letter is another example of their attempt to intimidate & and smother a small business in legal fees in order to improperly bury a business that properly applied for, and received registration for their Hamptons Glow trademark.

G.) Fact:

Merriam-Webster Dictionary defines the word “Glow” as follows:

Intransitive verb:

1 a : to shine with or as if with an intense heat

- embers glowing in the darkness

b (1) : to have a rich warm typically ruddy color

- cheeks glowing with health

(2) : flush, blush

- the children glowed with excitement

2 a : to experience a sensation of or as if of heat

- glowing with rage

b : to show exuberance or elation

- glow with pride

Merriam-Webster Dictionary defines the word “Sun” as follows:

noun

1. a often capitalized : the luminous celestial body around which the earth and other planets revolve, from which they receive heat and light, which is composed mainly of hydrogen and helium, and which has a mean distance from earth of about 93,000,000 miles (150,000,000 kilometers), a linear diameter of 864,000 miles (1,390,000 kilometers), and a mass 332,000 times greater than earth

b : a celestial body like the sun : star

2 : the heat or light radiated from the sun

- played in the sun all day

3 : one resembling the sun (as in warmth or brilliance)

4 : the rising or setting of the sun

- from sun to sun

5 : glory, splendor

Argument:

Given that “Glow” is a verb & “Sun” is a noun, and they are two completely different words in sight, sound, meaning & use. The suggestion that the general public would be confused is ridiculous. The word Glow is a common descriptive, generic phrase and part of the Hamptons Glow mark as a whole.

The word Glow is ubiquitous in the current vernacular, not only by the general public but in the health & beauty space as well. Further to that point, the term is used to describe the effects of an endless array of products categorized in Class 3 from make up, highlighting and bronzing cosmetics, skincare, face masks, exfoliants, etc. The list is endless.

Quoting the use of the word Glow in an article to describe the effects of Petitioner/Opposer’s Hampton Sun product and stating that the general public will be confused is absurd at best and gives very little credit to a consumers ability to identify a descriptor or adjective from the name of another brand.

As an example, the following are just a small representation of brands and products within the class 3 category that utilize the word “Glow”: Glam Glow, Jergens Natural Glow, South

Seas Glow Self Tanner, Luna Bronze Glow Gradual Self Tanner, Glow Recipe, Kora Organics Noni Glow Oil, Kiehls Glow Formula Skin Hydrator, Glossier Super Glow Serum, Stila Aqua Glow Serum, Marc Jacobs Beauty Glow Stick, Sephora Favorites Sunkissed Glow, etc. The list goes on and on and strongly reinforces the fact that consumers have the ability to differentiate not only products that use a general descriptor, but certainly brand names that utilize completely different words in their trademark.

H.) Fact:

On or about December 15, 2015 Registrant/Applicant, Hamptons Glow provided Petitioner with a comprehensive search & clearance report conducted by Coresearch searching for “Hampton” or “Hamptons” for goods and services in trademark classes 3, 4 & 44.

Argument:

Within that search report, 947 records were located of businesses that have filed for or currently registered marks in classes 3, 4 & 44 containing either “Hampton or “Hamptons” indicating common & active use of the geographical descriptors and indicates common use of the geographical indicator as well as the indisputable “right to use” “Hampton” & “Hamptons” for Hamptons Glow & other, existing businesses in classes 3, 4 & 44. Complete report contained in EXHIBIT 11 of the Trial Testimony.

I.) Fact:

Petitioner/Opposer submitted Objections to Evidence to the Board on December 7, 2017 following Registrant/Applicant's submission of Final Trial Testimony & supporting exhibits. Seeking to strike important evidence on their contention that evidence is required to be submitted under Notice of Reliance. The Board issued a letter on March 28th, 2018 to both parties indicating that Petitioner/Opposer's "argument is not well taken." As the manner in which the evidence was introduced and submitted by Registrant/Applicant is permitted.

Petitioner/Opposer's motion to strike was denied by the Board.

Argument:

Petitioner/Opposer does not have a valid rebuttal to Registrant's valid trademark. Instead of submitting a proper rebuttal to Registrant/Applicant's Final Testimony, Petitioner/Opposer must resort to an attempt to use procedural devices to scuttle Registrants legitimate defense proving their weak claims of infringement and frivolous suit.

V. Conclusion

The Petitioner/Opposer's cancellation and opposition proceedings are frivolous, unwarranted and without grounds. Registrant/Applicant's mark disclaims the geographical indicator as required by Federal Trademarking Statutes & as recommended by the USPTO Examining Attorney supporting the proper registration and application of the Hamptons Glow mark.

The dissimilarities between the Petitioner/Opposer and Registrant/Applicants marks in appearance, sound, design elements, commercial meaning and impression are absolutely indisputable as Registrant/Applicant's mark is a fanciful, unique, colorful design while the Petitioner/Opposer consists two words in block text only.

Registrant has a valid Registration and the clear evidence shows that Petitioner was tracking the Class 3 application, sending a threatening cease & desist letter as an intimidation tactic prior to registration, but failed to timely oppose the registration.

Petitioner/Opposer has exhibited a pattern of unfair litigation in the past, employing abusive tactics against other small businesses, which may not have the time, resources, or expertise to fight back against their unsubstantiated claims of infringement. Hamptons Glow respectfully requests that S&G's Petition to Cancel and Opposition to their Application be dismissed.

Dated: July 14, 2018

Respectfully submitted,

/Rachel Thompson/

Rachel Thompson

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CERTIFICATE OF SERVICE UNDER 37 C.F.R. §2.119

I hereby certify that on this 14th day of July, 2018, a true and correct copy of the foregoing TRIAL BRIEF OF HAMPTONS GLOW/RACHEL THOMPSON REGISTRANT/APPLICANT UNDER 37 C.F.R § 2.122(g) was served on counsel of record for the Opposer/Petitioner via email, per mutual agreement of the parties, to the following address:

David A. Jones
Powley & Gibson, p.c.
djones@powleygibson.com

/Rachel Thompson/
Rachel Thompson