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

Proceeding	91232581
Party	Plaintiff Kobe Bryant
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

KOBE BRYANT,

Opposer,

v.

47 / 72 INC.,

Applicant.

In re Application Serial No. 87/005,861  
Mark: The Black Mamba

Opposition No. 91232581

**MOTION FOR LEAVE TO AMEND OPPOSITION**

Opposer Mr. Kobe Bryant (hereinafter “Kobe” or “Opposer”), by and through his counsel, Saltz Matkov P.C., hereby files this Motion for Leave to Amend Opposition seeking to substitute Kobe, Inc. (hereinafter “KBI”) as the Opposer. A proposed First Amended Notice of Opposition is attached hereto as Exhibit “A”.

Applicant 47 / 72 Inc.’s (hereinafter “Applicant”) Designation “The Black Mamba” (the “Applicant’s Designation”) was filed in International Class 35 on April 19, 2016 in connection with “[o]nline retail store services featuring shirts, hooded sweatshirts, sweatshirts, one-piece clothing for babies, mobile electronics cases, posters, pillows, mugs, tote bags” and was published for opposition in the *Official Gazette* on October 4, 2016. Thereafter, both Opposer and KBI requested and obtained extensions from the Trademark Trial and Appeal Board to oppose the Applicant’s Designation.

On January 31, 2017 Opposer filed a Notice of Opposition against Applicant on the grounds that Opposer believed he would be damaged by registration of the designation. Opposer contested registration of the Applicant’s Designation under the provisions of Sections 2(a), (c), (d), and 13 of the Trademark Act of July 5, 1946 (the “Lanham Act”), 15 U.S.C. §§ 1052(a), (c),

(d), and 1063. Opposer now seeks leave to amend the Notice of Opposition pursuant to the Fed. R. Civ. P. 15(a), 37 C.F.R. § 2.107, and TBMP § 303.05(b).

Federal Rule of Civil Procedure 15(a) permits a party to amend a pleading with leave of court. Rule 15 further provides that the court “should freely give leave when justice so requires.” In proceedings before the Trademark Trial and Appeal Board, permission to amend a complaint to substitute a plaintiff has been granted pursuant to this liberal standard. *Raker Paint Factory v. United Lacquer Mfg. Corp.*, 141 U.S.P.Q. (BNA) 407 (Trademark Trial & App. Bd. 1964). “[W]here there is no change in the cause of action and the party substituted bears some relation of interest to the original party and to the suit, the substitution is allowed.” *Id.* (quoting *N.Y. Evening Post Co. v. Chaloner*, 265 F. 204, 213 (2d Cir. 1920)) (internal quotation marks omitted). There is a strong liberality among Trademark Trial & Appeal Board panels to permit amendment of a notice of opposition. *Id.* Absent undue delay, bad faith, repeated failure to amend, and unfair prejudice to opposing parties, leave to amend should be granted. *Id.*

Opposer seeks to substitute KBI as the Opposer. KBI is authorized by Opposer to register, use, license, defend and enforce Opposer’s rights in his name, likeness, and trademarks and thus is the proper party in this proceeding. KBI sought and obtained an extension to oppose Applicant’s Designation in this proceeding, and is therefore known to Applicant. KBI, with Opposer’s permission, applied to register the “Black Mamba” mark with the U.S. Patent and Trademark Office, Application No. 87/021,141, on May 2, 2016. Therefore, pursuant to TBMP § 206.02, Trademark Act §§ 5, 45, and 15 U.S.C. §§ 1055, 1127, KBI is in privity with Opposer for purposes of these proceedings.

In addition, this amendment is requested at a very early stage in these proceedings as Applicant’s counsel sought withdrawal on February 16, 2017, which was granted on March 2,

2017. Applicant recently elected to proceed *Pro Se* on April 1, 2017. A new Scheduling Order was issued by the Board on April 3, 2017, which provided that an Answer shall be filed by May 3, 2017 with discovery commencing on June 2, 2017. Applicant has not filed an Answer or other responsive pleading and no discovery has occurred. No substantive changes are made to the Opposition by substituting KBI, and Applicant suffers no unfair surprise, prejudice or change in position as KBI was known to Applicant by virtue of their extension request in this matter.

**WHEREFORE**, Opposer respectfully requests that the Motion for Leave to Amend Opposition be granted.

Respectfully submitted,

By: /s/Matthew D. Matkov  
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Attorneys for Kobe Bryant and Kobe, Inc.

Dated: April 5, 2017

**CERTIFICATE OF SERVICE**

I, Matthew D. Matkov, Esquire, attorney for Opposer Mr. Kobe Bryant, do hereby certify that on April 5, 2017, I caused the foregoing *Motion for Leave to Amend Opposition* to be filed via the Electronic System for Trademark Trials and Appeals and that the foregoing was served upon *pro se* applicant via the electronic emailing address of record below:

Mike Lin  
[mikelinsf@gmail.com](mailto:mikelinsf@gmail.com)

/s/Matthew D. Matkov  
Matthew D. Matkov, Esq.

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

KOBE BRYANT,

Opposer,

v.

47 / 72 INC.,

Applicant.

In re Application Serial No. 87/005,861  
Mark: The Black Mamba

Opposition No. 91232581

**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR LEAVE TO AMEND OPPOSITION**

Opposer Mr. Kobe Bryant (hereinafter “Kobe” or “Opposer”), by and through his counsel, Saltz Matkov P.C., hereby files this Memorandum of Law in Support of Opposer’s Motion for Leave to Amend Opposition to substitute Kobe, Inc. (hereinafter “KBI”) as the Opposer. A proposed First Amended Notice of Opposition is attached hereto as Exhibit “A”.

**I. INTRODUCTION**

Applicant 47 / 72 Inc.’s (hereinafter “Applicant”) Designation “The Black Mamba” (the “Applicant’s Designation”) was filed in International Class 35 on April 19, 2016 in connection with “[o]nline retail store services featuring shirts, hooded sweatshirts, sweatshirts, one-piece clothing for babies, mobile electronics cases, posters, pillows, mugs, tote bags” and was published for opposition in the *Official Gazette* on October 4, 2016. Thereafter, both Opposer and KBI requested and obtained extensions from the Trademark Trial and Appeal Board to oppose Applicant’s Designation.

On January 31, 2017 Opposer filed a Notice of Opposition against Applicant on the grounds that Opposer believes he will be damaged by registration of the designation “The Black

Mamba”. Opposer contested registration of the Applicant’s Designation under the provisions of Sections 2(a), (c), (d), and 13 of the Trademark Act of July 5, 1946 (the “Lanham Act”), 15 U.S.C. §§ 1052(a), (c), (d), and 1063. Opposer now seeks leave to amend the Notice of Opposition pursuant to the Fed. R. Civ. P. 15(a), 37 C.F.R. § 2.107, and TBMP § 303.05(b) to substitute KBI for Kobe as the Opposer in this matter as a party in privity with Kobe Pursuant to TBMP § 206.02, Trademark Act §§ 5, 45, and 15 U.S.C. §§ 1055, 1127.

This amendment is requested at a very early stage in these proceedings as Applicant’s counsel sought withdrawal on February 16, 2017, which was granted on March 2, 2017. Applicant recently elected to proceed *Pro Se* on April 1, 2017. A new Scheduling Order was issued by the Board on April 3, 2017, which provided that an Answer shall be filed by May 3, 2017 with discovery commencing on June 2, 2017. Applicant has not filed an Answer or other responsive pleading and no discovery has occurred. No substantive changes are made to the Opposition by substituting KBI, and Applicant suffers no unfair surprise, prejudice or change in position as KBI was known to Applicant by virtue of their extension request in this matter.

## **II. ARGUMENT**

Federal Rule of Civil Procedure 15(a) permits a party to amend a pleading with leave of court. Rule 15 further provides that the court “should freely give leave when justice so requires.” In proceedings before the Trademark Trial and Appeal Board, permission to amend a complaint to substitute a plaintiff has been granted pursuant to this liberal standard. *Raker Paint Factory v. United Lacquer Mfg. Corp.*, 141 U.S.P.Q. (BNA) 407 (Trademark Trial & App. Bd. 1964). In such cases, “where there is no change in the cause of action and the party substituted bears some relation of interest to the original party and to the suit the substitution is allowed.” *Id.* (quoting *N.Y. Evening Post Co. v. Chaloner*, 265 F. 204, 213 (2d Cir. 1920)) (internal quotation marks

omitted). There is a strong liberality among Trademark Trial & Appeal Board panels to permit amendment of a notice of opposition. *Id.* Absent undue delay, bad faith, repeated failure to amend, and unfair prejudice to opposing parties, leave to amend should be granted. *Id.*

Pursuant to 37 C.F.R. § 2.107, “pleadings in an opposition proceeding...may be amended in the same manner and to the same extent as in a civil action in a United States district court.” Pursuant to TBMP § 303.05(b), a party in privity with an opposer “may step into the...shoes” of the opposer. Privity is present when the entities are “related companies” within the meaning of Trademark Act §§ 5, 45, and 15 U.S.C. §§ 1055, 1127. TBMP § 206.02. In *Raker, supra*, a business entity filed a notice of opposition against an applicant and sought to amend the notice to substitute the opposer pursuant to the aforementioned authority. *Raker*, 141 U.S.P.Q. (BNA) 407. The Trademark Trial and Appeal Board panel permitted the substitution, noting that the substance of the opposition was not affected by the substitution, and therefore the applicant suffered no prejudice. *Id.*

Here, Opposer seeks to substitute KBI as the Opposer. KBI is authorized by Opposer to register, use, license, defend and enforce Kobe’s rights in his name, likeness, and trademarks. KBI sought and obtained an extension to oppose Applicant’s Designation in this proceeding and as such their participation comes as no surprise. KBI, with Opposer’s permission, applied to register the “Black Mamba” mark with the U.S. Patent and Trademark Office, Application No. 87/021,141, on May 2, 2016. Based on the above, KBI is in privity with Opposer for purposes of these proceedings. As in *Raker*, this substitution will not affect the substance of the Notice of Opposition, and the Applicant will therefore suffer no prejudice. Since Applicant’s recent election to proceed *pro se*, substitution at this early stage is appropriate to streamline this proceeding.

In addition, this amendment is requested at a very early stage in these proceedings as Applicant's counsel sought withdrawal on February 16, 2017, which was granted on March 2, 2017. Applicant recently elected to proceed *Pro Se* on April 1, 2017. A new Scheduling Order was issued by the Board on April 3, 2017, which provided that an Answer shall be filed by May 3, 2017 with discovery commencing on June 2, 2017. Applicant has not filed an Answer or other responsive pleading and no discovery has occurred. No substantive changes are made to the Opposition by substituting KBI, and Applicant suffers no unfair surprise, prejudice or change in position as KBI was known to Applicant by virtue of their extension request in this matter.

**WHEREFORE**, Opposer respectfully requests that the Motion for Leave to Amend Opposition be granted.

Respectfully submitted,

By: */s/Matthew D. Matkov*  
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Attorneys for Kobe Bryant and Kobe, Inc.

Dated: April 5, 2017

**CERTIFICATE OF SERVICE**

I, Matthew D. Matkov, Esquire, attorney for Opposer Mr. Kobe Bryant, do hereby certify that on April 5, 2017, I caused the foregoing *Memorandum of Law in Support of Motion for Leave to Amend Opposition* to be filed via the Electronic System for Trademark Trials and Appeals and that the foregoing was served upon *pro se* applicant via the electronic emailing address of record below:

Mike Lin  
[mikelinsf@gmail.com](mailto:mikelinsf@gmail.com)

/s/Matthew D. Matkov  
Matthew D. Matkov, Esq.

# EXHIBIT “A”

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

KOBE, INC.,

Opposer,

v.

47 / 72 INC.,

Applicant.

In re Application Serial No. 87/005,861  
Mark: The Black Mamba

Opposition No. 91232581

**FIRST AMENDED NOTICE OF OPPOSITION**

Opposer Kobe, Inc. (hereinafter “KBI” or “Opposer”), by and through its counsel, Saltz Matkov P.C., hereby files this First Amended Notice of Opposition against Applicant 47 / 72 Inc. (hereinafter “Applicant”). KBI believes it will be damaged by registration of the designation “The Black Mamba” (the “Applicant’s Designation”) as shown in Application Serial No. 87/005,861, filed on April 19, 2016 in International Class 35 by Applicant in connection with:

[o]nline retail store services featuring shirts, hooded sweatshirts, sweatshirts, one-piece clothing for babies, mobile electronics cases, posters, pillows, mugs, tote bags.

KBI hereby opposes registration of the Applicant’s Designation under the provisions of Sections 2(a), (c), (d), and 13 of the Trademark Act of July 5, 1946 (the “Lanham Act”), 15 U.S.C. §§ 1052(a), (c), (d), and 1063.

As grounds for opposition, Opposer alleges that:

1. Kobe Bryant (hereinafter “Kobe”) is an internationally recognized, famous, recently retired professional basketball player who previously played in the National Basketball Association (“NBA”) for the Los Angeles Lakers.

2. KBI is a corporation registered in the State of California with counsel’s office

located at 998 Old Eagle School Road, Suite 1206, Wayne, Pennsylvania. KBI is authorized by Kobe to register, use, license, defend, and enforce Kobe's rights in his name, likeness, and trademarks ("Opposer's Marks").

3. Central to KBI's registration, use, license, defense, and enforcement of Opposer's Marks is Kobe's long and distinguished NBA career. Kobe is a five-time NBA champion (2000-2002, 2009-2010); two-time NBA Finals MVP (2009-2010); one-time NBA Most Valuable Player (2008); eighteen-time NBA All Star (1998, 2000-2016); four-time NBA All-Star Game MVP (2002, 2007, 2009, 2011); eleven-time All-NBA First Team (2002-2004, 2006-2013); two-time All-NBA Second Team (2000-2001); two-time All-NBA Third Team (1999, 2005); nine-time NBA All-Defensive First Team (2000, 2003-2004, 2006-2011); three-time NBA All-Defensive Second Team (2001-2002, 2012); two-time NBA scoring champion (2006-2007); NBA Slam Dunk Contest champion (1997); NBA All-Rookie Second Team (1997); Los Angeles Lakers all-time leading scorer and the third leading scorer in NBA history. In 2006, he scored a career-high 81 points against the Toronto Raptors, the second most points scored in a single game in NBA league history. Kobe played the final NBA game of his career on April 13, 2016, scoring 60 points and telling the crowd "Mamba Out."

4. For many years, and long before April 19, 2016, the filing date of the intent-to-use application for Applicant's Designation, Kobe's nickname has been recognized worldwide to be the "Black Mamba" or simply "Mamba." Kobe's "Black Mamba" nickname has been the subject of numerous media articles and advertisements detailing the inception, widespread use, public knowledge and general recognition of his nickname across the globe.

5. For many years, and long before April 19, 2016, the filing date of the intent-to-use application for Applicant's Designation, Opposer KBI and Kobe's other authorized business

partners, sponsors, and/or licensees (collectively “Licensees”), have used Opposer’s Marks, including but not limited to the “Black Mamba” mark and variations thereof, in the United States in connection with, *inter alia*, the sale and licensing of: shirts and tee shirts; athletic footwear; hats, caps; base-layers; athletic uniforms; sweatshirts; posters; trading cards; backpacks; phone cases; and water bottles.

6. As a result of the use of Opposer’s Marks directly and through approved Licensees, since at least as early as 2007, KBI owns significant and extensive common law rights in Opposer’s Marks. During the longstanding, widespread and continuous use of Opposer’s Marks, Opposer KBI, directly and through approved Licensees, has expended considerable time, effort, and money on advertising and promotion of products and services bearing the Opposer’s Marks. As a result, Opposer’s Marks have become well known by the general public and are recognized and relied upon as identifying Opposer’s goods and services and as distinguishing them from the goods and services of others, and have come to represent and symbolize extremely valuable goodwill belonging exclusively to Opposer.

7. For example, in anticipation of and in commemoration of Kobe’s final game in the NBA, Nike, Inc. declared April 13 to be “Mamba Day.” World-class athletes from around the globe wore black and gold Kobe shoes and reflected on Kobe’s far-reaching impact on sports as a whole in the days leading up to “Mamba Day” as part of a tribute to Kobe’s long and accomplished career in the NBA.

8. KBI applied to register the “Black Mamba” mark with the U.S. Patent and Trademark Office, Application No. 87/021,141, on May 2, 2016.

9. On April 19, 2016, six (6) days after the final NBA game of Kobe’s career, Applicant filed an intent-to-use application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), for

federal registration of the Applicant's Designation shown in Application Serial No. 87/005,861 covering:

[o]nline retail store services featuring shirts, hooded sweatshirts, sweatshirts, one-piece clothing for babies, mobile electronics cases, posters, pillows, mugs, tote bags

in International Class 35.

10. Applicant's Designation, Application Serial No. 87/005,861, was published for opposition in the *Official Gazette* on October 4, 2016.

11. The Trademark Trial and Appeal Board extended the opposition period for Applicant's Designation by granting Opposer's timely requests for extensions. The opposition period for Application Serial No. 87/005,861 was set to expire on February 1, 2017. Opposer timely filed the initial Notice of Opposition on January 31, 2017.

12. Opposer's rights in Opposer's Marks are vastly superior to Applicant's rights in Applicant's Designation. A review of Applicant's other filed registrations shows that Applicant has established a pattern and practice of filing applications for well-known and recognized names and phrases, including characters and phrases associated with companies like Disney or entertainers such as Taylor Swift, Beyonce Knowles, and Jay Z. It is clear that Applicant is not the proper owner of these well-known and recognized terms and phrases, and that these filings are made in bad faith for the purpose of taking advantage of the goodwill associated with these marks. Such marks include, but are not limited, to the following: "To Infinity and Beyond"; "Let it Go"; "Nanu Nanu"; "Just Keep Swimming"; "Haters Gonna Hate"; "Nothing Compares 2 U"; "Ohana Means Family"; "Poison Ivy Park"; "Swiper no Swiping"; "Elena of Valora"; "99 Problems"; and "Mortimer Mouse."

13. On November 3, 2016, an article was published in the *World Trademark Review*

wherein the Applicant admits to filing over seventy-one (71) well-known and widely recognized marks in International Class 35. Applicant, in clear bad faith, admits that oppositions such as Opposer's are "great marketing" for his various "brands."

14. Similarly, Applicant's filing of the application for Applicant's Designation here is an improper filing made solely for the purpose of taking advantage of the goodwill associated with Opposer's Marks.

**FIRST GROUND FOR OPPOSITION TO REGISTRATION**  
**False Suggestion of a Connection**

15. Paragraphs 1-15 are incorporated as if fully set forth herein at length.

16. Kobe is a person within the meaning of the Lanham Act who has a right to privacy and publicity in his nickname. Kobe's nickname is recognized worldwide as the "Black Mamba" or "Mamba." KBI is authorized by Kobe to register, use, license, defend and enforce the rights therein.

17. The Applicant's Designation includes the identical nickname used by Kobe. The Applicant's Designation would be recognized as the name or identity of a person, in that it points uniquely and unmistakably to Kobe.

18. KBI has not authorized Applicant to use the opposed Applicant's Designation.

19. The fame or reputation of the "Black Mamba" nickname is such that, when the mark is used with the Applicant's goods or services, a connection with Kobe would be presumed.

20. Registration should therefore be refused pursuant to 15 U.S.C. § 1052(a).

**SECOND GROUND OF OPPOSITION**  
**Mark Consists of Name of Living Individual Without His Consent**

21. Paragraphs 1-21 are incorporated as if fully set forth herein at length.

22. The Applicant's Designation comprises a stage name and/or nickname of Kobe in violation of his rights of privacy and publicity.

23. The public will recognize and understand the Applicant's Designation as identifying Kobe because he is so well-known, both generally and in the Applicant's proposed class of goods, that the public will reasonably assume a connection between Kobe and the goods in connection with which the Applicant's Designation would be used.

24. KBI has not consented to Applicant's application or the registration of Applicant's Designation.

25. Registration should therefore be refused pursuant to 15 U.S.C. § 1052(c).

### **THIRD GROUND OF OPPOSITION**

#### **Likelihood of Confusion**

26. Paragraphs 1-26 are incorporated as if fully set forth herein at length.

27. Applicant's Designation is similar to Opposer's Marks, such that it is likely to cause confusion, to cause mistake, or to deceive.

28. The goods applied for by Applicant under Applicant's Designation are identical to or related to the goods Opposer and its Licensees offer and have offered under Opposer's Marks.

29. The goods will be offered to the same or overlapping customers.

30. KBI believes it will be damaged by registration of Applicant's Designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that Applicant's Designation so resembles Opposer's Marks used by Opposer in the United States and elsewhere as to be likely to cause confusion, mistake or to deceive consumers when used on or in connection with the goods identified in the application for Applicant's Designation, with consequent injury to Opposer and to the public.

31. The registration of Applicant's Designation would grant Applicant rights to which it is not entitled, and would be inconsistent with the prior and established rights of Opposer in Opposer's Marks.

32. The Applicant, through the filing of this and other applications based on the names and marks of famous people has tacitly admitted that Applicant's intent is to improperly trade on the goodwill of others by virtue of its filings.

33. Registration should therefore be refused pursuant to 15 U.S.C. § 1052(d).

**WHEREFORE**, Opposer believes it will be damaged by registration of the Applicant's Designation shown in Application Serial No. 87/005,861 and respectfully requests that the registration sought by Applicant be refused.

Dated: April 5, 2017

Respectfully submitted,

By: /s/Matthew D. Matkov  
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Peter A. Galick, Esquire  
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Attorneys for Kobe, Inc.

**CERTIFICATE OF SERVICE**

I, Matthew D. Matkov, Esquire, attorney for Opposer Kobe, Inc., do hereby certify that on April \_\_\_ 2017, I caused the foregoing *First Amended Notice of Opposition* to be filed via the Electronic System for Trademark Trials and Appeals, and that by virtue of this filing and pursuant to 37 CFR §2.105, the Trademark Trial and Appeal Board shall prepare a notice of institution, which shall identify the proceeding as an opposition, number of the proceeding, and the application(s) involved; and the notice shall designate a time, not less than thirty (30) days from the mailing date of the notice, within which an answer must be filed. The notice, which will include a web link or web address to access the electronic proceeding record, constitutes service of the notice of opposition upon the applicant below:

Mike Lin  
47 / 72 INC  
900 East 1<sup>st</sup> Street, #110  
Los Angeles, CA 90012

/s/Matthew D. Matkov  
Matthew D. Matkov, Esq.