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Filing date: **08/13/2018**

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

Proceeding	91238144
Party	Defendant H. Best Ltd.
Correspondence Address	HOWARD F MANDELBAUM LEVINE MANDELBAUM PLLC 222 BLOOMINGDALE ROAD SUITE 203 WHITE PLAINS, NY 10605 UNITED STATES mail@levman.com 914-421-0500
Submission	Opposition/Response to Motion
Filer's Name	Howard F. Mandelbaum
Filer's email	mail@levman.com
Signature	/Howard F. Mandelbaum/
Date	08/13/2018
Attachments	Memorandum in Opp to Motion to Extend.pdf(293621 bytes) Declaration in Opp to Motion to Extend.pdf(1983626 bytes)

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

-----X
Alliance Sports Group, L.P.

Opposer,

v.

Opposition No. 91238144

Serial No. 87435561

H. Best Ltd.

Applicant.

-----X

**APPLICANT'S MEMORANDUM IN OPPOSITION TO OPPOSER'S MOTION
FOR EXTENSION OF THE OPPOSITION SCHEDULE**

Opposer objects to having its application for trademark registration further delayed by an extension of the opposition schedule for which Opposer has moved on the eve of the close of discovery.

This opposition was commenced by the service and filing of a notice of opposition on September 28, 2017. Issue was joined by the timely service and filing of an Answer on January 10, 2018.

In the course of a discovery conference on December 6, 2017, counsel began a discussion of settlement which was continued by email from December 18, 2017 through January 22, 2018. The last substantive communication between counsel in January of this year was from Applicant's attorney to Opposer's attorney clarifying Applicant's earlier settlement proposal. Since that time, Opposer has made no settlement offer nor has the Opposer served any request for discovery.

On April 17, there was a brief email exchange between counsel aimed at scheduling further telephone discussions but, again, Opposer's counsel did not further respond. Meanwhile, the opposed application has languished while Opposer has taken no action to prosecute or settle the opposition.

This motion for an extension of time was made by Opposer on the eve of the close of discovery. "Mere delay in initiating discovery does not constitute good cause for an extension of the discovery period." TMBP 403.04. This is so even when the motion is a first request to extend any deadline, the extension privilege has not been abused, and there is no evidence of bad faith on the part of Opposer in requesting the extension. National Football League v. DNH Management LLC, 85 USPQ2d 1852, 1854-55 (TTAB 2008).

Wherefore, Applicant requests that Opposer's motion for an extension of time be denied.

White Plains, NY
Date: August 13, 2017

Respectfully Submitted,
LEVINE MANDELBAUM PLLC
Attorneys for Applicant

/Howard F. Mandelbaum/
Howard F. Mandelbaum
222 Bloomindale Rd.
Suite 203
White Plains, NY 10605
(914) 421-0500

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Applicant's Memorandum In Opposition To Opposer's Motion For Extension Of The Opposition Schedule has been sent this August 13, 2018, by email to:

Peter M. de Jonge, Esq.
Ian Wang, Esq.
Thorpe North & Western, LLP
175 South Main Street, Suite 900
Salt Lake City, UT 84111

at

dejonge@tnw.com, alexandra.thomas@tnw.com,
ian.wang@tnw.com, litigation@tnw.com

/Howard F. Mandelbaum/
Howard F. Mandelbaum

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

-----X
Alliance Sports Group, L.P.

Opposer,

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Opposition No. 91238144

Serial No. 87435561

H. Best Ltd.

Applicant.

-----X

DECLARATION OF HOWARD F. MANDELBAUM

Howard F. Mandelbaum declares as follows:

1. I am an attorney at law dully admitted to practice before the courts of the state of New York and the U.S. Patent and Trademark Office. I am the sole attorney for the Applicant in this opposition.

2. I am fully familiar with all activity in this opposition and have been the sole representative of the Applicant in all settlement communications.

3. On December 6, 2017 I participated in a discovery conference with Opposer's attorney, Ian Wang, during which we discussed the possibility of settlement. Our discussion of settlement was continued by email from December 18, 2017 through January 22, 2018. The last substantive communication between counsel in January of this year was from me to attorney Wang

clarifying a settlement proposal that I had made. A copy of the December 2017 - January 2018 email exchange is annexed hereto as Exhibit A.

4. After my reply of January 22, 2018, I heard nothing from the Opposer's counsel for almost three months. On April 17, attorney Wang sent me an email communication asking about my availability for a discussion of my client's settlement proposal. Although I timely responded with my availability, again, there was no communication from the Opposer's side. No substantive settlement discussions took place in April 2018.

5. To this date, the Opposer has made no settlement proposal nor has the Opposer served any request for discovery.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

Dated: August 13, 2018
White Plains, NY

/Howard F. Mandelbaum/
Howard F. Mandelbaum
222 Bloomindale Rd.
Suite 203
White Plains, NY 10605
(914) 421-0500

EXHIBIT A

howard.mandelbaum@levman.com

From: howard.mandelbaum@levman.com <mail@levman.com>
Sent: Monday, January 22, 2018 4:09 PM
To: 'Ian Wang'
Subject: RE: SOLAR DRI opposition settlement

Flag Status: Flagged

Hi Ian.

My error. The application included active wear when filed but was amended to delete it. Please delete active wear from the proposal below.

Thank you.

Regards

Howard

Howard F. Mandelbaum
Levine Mandelbaum PLLC
222 Bloomingdale Road, Suite 203
White Plains, NY 10605
Tel: (914) 421-0500
Fax: (914) 840-1234
howard.mandelbaum@levman.com

From: Ian Wang [mailto:ian.Wang@tnw.com]
Sent: Monday, January 22, 2018 12:37 PM
To: 'howard.mandelbaum@levman.com' <mail@levman.com>
Subject: RE: SOLAR DRI opposition settlement

Hi Howard,

A quick question. The current identification of goods for the SOLAR DRI mark does not include "active wear" at all. Wouldn't the inclusion of "moisture wicking active wear" be considered a broadening of the identification of goods?

From: howard.mandelbaum@levman.com [mailto:mail@levman.com]
Sent: Wednesday, January 17, 2018 4:01 PM
To: Ian Wang
Subject: RE: SOLAR DRI opposition settlement

Ian,

How about

"moisture wicking underwear; moisture wicking active wear; moisture wicking leggings; moisture wicking shorts; moisture wicking tank tops; moisture wicking t shirts; moisture wicking tops; moisture wicking jackets"?

Regards

Howard

Howard F. Mandelbaum

Levine Mandelbaum PLLC
222 Bloomingdale Road, Suite 203
White Plains, NY 10605
Tel: (914) 421-0500
Fax: (914) 840-1234
howard.mandelbaum@levman.com

From: Ian Wang [<mailto:Ian.Wang@tnw.com>]
Sent: Wednesday, January 17, 2018 3:47 PM
To: howard.mandelbaum@levman.com <mail@levman.com>
Subject: RE: SOLAR DRI opposition settlement

Hi Howard,

My client is certainly open to resolving the oppositions. Can you elaborate a bit more on how the material of the products are “moisture absorbent” and how your client would propose limiting the identification of goods?

Kind regards,

Ian Wang • ATTORNEY

Thorpe North & Western | 801.566.6633 | tnw.com

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From: howard.mandelbaum@levman.com [<mailto:mail@levman.com>]
Sent: Friday, January 12, 2018 11:30 AM
To: Ian Wang <Ian.Wang@tnw.com>
Subject: SOLAR DRI opposition settlement

Ian,

I can now confirm that the material of the products is moisture absorbent. We are prepared to limit our identification of goods accordingly if it will resolve the oppositions. Please let me know.

Thank you.

Regards

Howard

Howard F. Mandelbaum
Levine Mandelbaum PLLC
222 Bloomingdale Road, Suite 203
White Plains, NY 10605
Tel: (914) 421-0500
Fax: (914) 840-1234
howard.mandelbaum@levman.com

From: howard.mandelbaum@levman.com [<mailto:mail@levman.com>]

Sent: Wednesday, January 10, 2018 1:51 PM

To: 'Ian Wang' <Ian.Wang@tnw.com>

Subject: RE: SOLAR DRI opposition settlement

Hi Ian,

I'm still trying to get an answer to the question you have posed below. Meanwhile, attached is a service copy of Applicant's Initial Disclosures.

Regards

Howard

Howard F. Mandelbaum
Levine Mandelbaum PLLC
222 Bloomingdale Road, Suite 203
White Plains, NY 10605
Tel: (914) 421-0500
Fax: (914) 840-1234
howard.mandelbaum@levman.com

From: Ian Wang [<mailto:Ian.Wang@tnw.com>]

Sent: Tuesday, January 09, 2018 12:33 PM

To: howard.mandelbaum@levman.com <mail@levman.com>

Subject: RE: SOLAR DRI opposition settlement

Hi Howard,

I hope you had a nice holidays and new year. I have confirmed that my client sells its SOLAR branded products in brick and mortar stores, so this rules out using distribution channels to distinguish the marks. Have you confirmed with your client about whether SOLAR DRI refers to a physical property of the underlying clothing fabric?

Kind regards,

Ian Wang • ATTORNEY

Thorpe North & Western | 801.566.6633 | tnw.com

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From: howard.mandelbaum@levman.com [<mailto:mail@levman.com>]

Sent: Tuesday, December 19, 2017 8:29 AM

To: Ian Wang <Ian.Wang@tnw.com>

Subject: RE: SOLAR DRI opposition settlement

Hi Ian,

I haven't heard back from the client yet and am sending a reminder. Meanwhile, as I recall, you were going to check on your client's distribution channels as another possible way of distinguishing the marks, e.g., whether sales are exclusively online.

Regards

Howard

Howard F. Mandelbaum
Levine Mandelbaum PLLC
222 Bloomingdale Road, Suite 203
White Plains, NY 10605
Tel: (914) 421-0500
Fax: (914) 840-1234
howard.mandelbaum@levman.com

From: Ian Wang [<mailto:Ian.Wang@tnw.com>]
Sent: Monday, December 18, 2017 6:29 PM
To: howard.mandelbaum@levman.com <mail@levman.com>
Cc: Alexandra Thomas <Alexandra.Thomas@tnw.com>
Subject: SOLAR DRI opposition settlement

Hi Howard,

I'm checking to see if you had a chance to talk to your client about whether SOLAR DRI refers to a physical property of the clothing made by your client, and if so, whether your client would be willing to incorporate that property into the identification of goods for the SOLAR DRI mark. Please let us know.

Kind regards,

Ian Wang • ATTORNEY

Thorpe North & Western | 801.566.6633 | tnw.com

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EXHIBIT B

howard.mandelbaum@levman.com

From: howard.mandelbaum@levman.com <mail@levman.com>
Sent: Friday, April 20, 2018 5:20 PM
To: 'Ian Wang'
Subject: RE: SOLAR DRI opposition settlement

Flag Status: Flagged

Hi Ian,

I'm available on Monday most of the day. Just let me know what time you would like to call.

Thank you.

Regards

Howard

Howard F. Mandelbaum
Levine Mandelbaum PLLC
222 Bloomingdale Road, Suite 203
White Plains, NY 10605
Tel: (914) 421-0500
Fax: (914) 840-1234
howard.mandelbaum@levman.com

From: Ian Wang <Ian.Wang@tnw.com>
Sent: Friday, April 20, 2018 2:57 PM
To: howard.mandelbaum@levman.com <mail@levman.com>
Subject: RE: SOLAR DRI opposition settlement

Hi Howard,

I'm traveling cross-country today. Are you available on Monday?

From: howard.mandelbaum@levman.com [mailto:levman.com]
Sent: Friday, April 20, 2018 8:48 AM
To: Ian Wang
Subject: RE: SOLAR DRI opposition settlement

Hi Ian,

Sorry I missed this earlier. I'm available today after 3:00 eastern time, 1:00 mountain time.

Regards

Howard

Howard F. Mandelbaum
Levine Mandelbaum PLLC
222 Bloomingdale Road, Suite 203
White Plains, NY 10605
Tel: (914) 421-0500
Fax: (914) 840-1234
howard.mandelbaum@levman.com

From: Ian Wang <Ian.Wang@tnw.com>
Sent: Tuesday, April 17, 2018 6:41 PM
To: howard.mandelbaum@levman.com <mail@levman.com>
Subject: SOLAR DRI opposition settlement

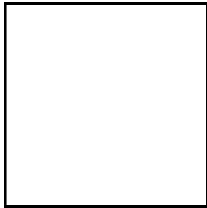
Hi Howard,

Are you available tomorrow to discuss your client's proposed settlement? If so, please let me know what time(s) work best for you. Thanks.

Ian Wang • ATTORNEY

Thorpe North & Western | 801.566.6633 | tnw.com

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www.avg.com

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Declaration of Howard F. Mandelbaum has been sent this August 13, 2018, by email to:

Peter M. de Jonge, Esq.
Ian Wang, Esq.
Thorpe North & Western, LLP
175 South Main Street, Suite 900
Salt Lake City, UT 84111

at

dejonge@tnw.com, alexandra.thomas@tnw.com,
ian.wang@tnw.com, litigation@tnw.com

/Howard F. Mandelbaum/
Howard F. Mandelbaum