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

Proceeding	91250931
Party	Defendant Martin Sprocket & Gear, Inc.
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Submission	Testimony For Defendant
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Date	09/20/2021
Attachments	SignedDeclaration- Jimmy Swiger.pdf(511618 bytes)

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

In the Matter of Trademark Application
Serial No.: 88/286120
For the mark: ELITE

Joh. Winklhofer Beteiligungs GmbH & Co.KG Opposer v. Martin Sprocket & Gear, Inc. Applicant	Opposition No. 91250931

DECLARATION OF JIMMY SWIGER

I, Jimmy Swiger, declare and state as follows:

1. I am employed by Applicant, Martin Sprocket & Gear, Inc., ("Martin"). I am over the age of 21 and fully competent to testify regarding the facts set forth in this Declaration. I am familiar with the facts and circumstances of the above-captioned proceeding, and I make these statements based on my own personal knowledge or upon information I have learned from Martin's company books and records or reviews of third-party websites and third-party trademark registrations.
2. I submit this Declaration in Support of Applicant, Martin Sprocket & Gear, Inc.

3. My title is Vice President and General Manager, PT Division & Marketing. Part of my job responsibilities is overseeing the marketing of drum rollers (drum pulleys) and belt pulleys used in large industrial conveyor systems and which are not used with chains including those marketed under branding that includes the word "Elite" ("the Elite Mark"), such product collectively referred to in this Declaration as "The Products".
4. Martin was founded in 1951 by Joe Martin Sr. Over the decades Martin has expanded through machining, fabrication, forging, casting, powdered metal technology and machined & injection molded plastic of power transmission components, material handling products and industrial hand tools.
5. Martin began branding the Products with the Elite Mark on approximately January 3, 2019.
6. The Products are generally custom ordered, and the prices vary. The Products are expensive and generally range in price from $274 to $4700. However, some Martin pullies branded under "Elite" can cost as much as $15,000.
7. The customers that purchase the Products are sophisticated purchasers of industrial machinery and are knowledgeable about different types of machinery and the customer's specific industrial needs.
8. The customers that purchase the Products take great care in their selection of industrial products, taking into account the specifications of the products, including their selection of one or more of the Products.

9. The distributors of the Products are sophisticated and knowledgeable purveyors of industrial products and the Products.

10. With respect to drum rollers, for example, when making a purchasing decision, the customer (and distributor assisting the customer) considers many features of the drum rollers, including the face (crown or flat), the diameter, the face width, hub size, whether there is lagging or no lagging, if lagging is desired, the thickness of the lagging and the style of the lagging (e.g. herringbone, diamond groove, ceramic, slide lagging, etc.)

11. The large industrial conveyors that comprise the drum pulley Products are not driven by chains. Rather, in such systems, a drive pulley is driven by a direct drive arrangement.

12. I have reviewed the Declaration of Dr. Frank Mitzschke presented by Opposer in this proceeding and the documents referred to therein and attached thereto.

13. I have reviewed the registrations Opposer Winklhofer relies upon in this proceeding ("Winklhofer Registrations").

14. I have reviewed the trademark application Martin filed that is the subject of this proceeding ("Martin Application").

15. I understand that in the Martin Application, Martin sought to register ELITE in connection with "*pulleys being parts of machines*" ("Original Goods Description").

16. I understand that the Trademark Examiner for the Martin Application ("Trademark Examiner") did not find that the ELITE mark the subject of the Martin Application is likely to cause confusion with any registration, including Winklhofer Registrations, and authorized publishing the Martin Application.

17. I agree with the Trademark Examiner.

18. I understand that Martin has proposed that the goods the subject of the Martin Application be amended to "*belt pulleys and drum pulleys not used with chains*" ("Proposed Amended Goods Description").

19. Martin does not believe that the ELITE mark the subject of the Martin Application, if registered in connection with the Original Goods Description, is likely to cause confusion with the Winklhofer Registrations.

20. Martin does not believe that the ELITE mark the subject of the Martin Application, if registered in connection with the Proposed Amended Goods Description, is likely to cause confusion with the Winklhofer Registrations.

21. Martin's use of "Elite" The documents produced in this proceeding and marked MSG(ELITE)_000017-000021 are representative examples of the Products.

22. Martin does not believe Martin's use of "Elite" in connection with the Products is likely to cause confusion with the goods reflected in the Winklhofer Registrations.

23. Martin is not aware of any reports of confusion in the marketplace between goods marketed and sold by Opposer and goods marketed and sold by Martin.

24. I have reviewed third party websites and third-part registrations concerning the use of "Elite" in connection with machines, machine parts, and products.

25. I note that there are numerous third parties using the word "Elite" in connection with such machines, machine parts and products.

26. Such third-party use of "Elite" in connection with machines, machine parts, and products includes those listing in Exhibits **A-BN and BR-DG.**

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this Declaration is executed this 20th day of September 2021.

Jimmy Swiger