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

Proceeding	91267740
Party	Plaintiff Carpathian Springs S.A., Valvis Holding S.A.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Carpathian Springs S.A. and  
Valvis Holding S.A.,

Opposers,

v.

Sun Stars & Sons Pte. Ltd.,

Applicant.

Opposition No.: 91267740

**RESPONSE IN OPPOSITION TO  
REGISTRANT’S MOTION FOR A MORE DEFINITE STATEMENT**

Applicant’s request for a more definite statement should be denied because allegations in the Notice of Opposition (1 TTABVUE, ¶¶ 1-15), are sufficiently definite such that Applicant is capable to frame a good faith answer without prejudice to itself. See Fed. R. Civ. P. 12(e). Applicant capability is further apparent due to the fact it understands “entirely” Opposers’ positions at issue in this proceeding (see, 5 TTABVUE, p. 4).

**BACKGROUND**

On February 19, 2021, Carpathian Springs S.A. and Valvis Holding S.A. (“Opposers”) filed a Notice of Opposition to oppose the confusingly similar mark in Applicant’s Application, Serial No. 88477788.

Subject to the Notice of Opposition, each Opposer,

(1) alleged its ownership of nearly identical marks as the other Opposer for nearly identical goods as the other Opposer for nearly identical registrations as the other Opposer;

(2) alleged identical common law rights in the overall design based on use in U.S. commerce for identical goods as the other Opposer;

(3) alleged asserted rights are prior to Applicant; and

(4) alleged identical damages from the same mark in Applicant's bottle-mark.

Applicant's motion generally objects to the Opposers' umbrella use of the term "Opposers' Mark." Upon review of the pleadings, the objection is without merit. Furthermore, Applicant alleges no prejudice and its inability to otherwise answer in good faith is stymied by the fact that Applicant's "entirely" understands Opposers' positions at issue in this proceeding.

### **PLEADING STANDARD**

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." A motion for a more definite statement is appropriate only in those cases where the pleading is (i) so vague or ambiguous that (ii) the movant cannot make a responsive pleading in good faith *or* without prejudice to itself. See Fed. R. Civ. P. 12(e).

### **ARGUMENT**

Applicant's motion is fatally defective because Applicant has not alleged how it would be prejudiced or how it cannot otherwise answer the Notice of Opposition in good faith seeing as Applicant's "entirely" understands Opposers' positions.

#### **Applicant fails to state and is otherwise unable to show how answering the Notice of Opposition would prejudice itself**

The Opposers' Mark is collectively defined as, the Carpathian Bottle, U.S. Registration No. 6031945 (1 TTABVUE, ¶ 1); the Valvis Bottle, U.S. Registration No. 4619128 (*id.*, ¶ 1); and, the overall design of the bottle (*id.*, ¶ 5) ("Opposers' Mark").

The Opposers' Mark consists of marks that are not 100% identical, however any difference is extremely minor and insignificant as the marks are legally identical, have identical goods and its owners are common (*id.*, ¶ 6). Applicant provides no insight as to how any slight difference in marks, bears any significance or how it could otherwise affect the ultimate conclusion in this case as to whether confusion is likely based on consideration of the marks in their entireties. *In re National Data Corp.*, 732 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

**Based on its familiarity with the “positions” taken by Opposers for “identical” marks, Applicant is able to answer the Opposition in good faith**

Any suggestion the Opposition is so “vague or ambiguous” that it cannot be answered is foiled by Applicant’s own statement at 4 TTABVUE, p. 4. Because Applicant is able to confirm Opposers’ pleading is “*entirely inconsistent* with the positions taken for either identical, Internationally related and/or highly similar marks in a series of *complex*, ongoing European Union and Romanian National actions between the parties” (*id.*) Applicant should *in good-faith* be able to make a responsive pleading in this proceeding for “identical marks.”

**Applicant’s suggestion to suspend is without any merit because does not explain how any proceedings concerns or has any impact or effect on Opposers’ use of Opposers’ Mark in the U.S.**

While TBMP 510.02(a) allows the Board to suspend a proceeding pending final determination of a foreign action, no foreign proceeding was identified by Applicant that has jurisdiction over use in the U.S. or which can otherwise impact Opposers’ U.S. common law rights asserted herein including those rights which extend from,

- (i) Opposers’ prior rights based on use in U.S. commerce,  
4 TTABVUE, ¶¶ 5, 9, 10;

(ii) Opposers' prior rights based on the mark in asserted registration, U.S. Registration No. 6031945, which is based on use in U.S. commerce, *e.g., id.*, ¶ 3; or

(iii) Opposers' prior rights based on use in U.S. commerce, in asserted U.S. Registration No. 4619128, combined Section 71 use and 15 incontestability Affidavit filed September 23, 2020.<sup>1</sup>

At best, the allegation may be presented in an affirmative defense, but does not support a basis to suspend and delay.

**WHEREFORE**, Applicant requests the Board deny Applicant's motion and Order it to provide a good faith answer to the opposition without further ado.

Dated: April 19, 2021

Respectfully submitted,  
Hill Wallack LLP

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<sup>1</sup> Opposers acknowledge U.S. Registration No. 4619128 is an extension of protection under 66(a) of the International Registration 1177583 that is based on Romanian Registration, RO 112110, *e.g., id.*, ¶ 1, which RO registration is subject to a proceeding beyond the U.S. However, even if the IB causes U.S. Registration No. 4619128 to cancel, this does not extinguish Opposers' U.S. common law rights or other U.S. registration. See also, *Miles Laboratories, Inc. v. International Diagnostic Technology, Inc.*, 220 USPQ 438, 445 (TTAB 1983) ("decisions of foreign courts...based upon different laws are irrelevant to the issue before us.").

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing, including Declaration and Exhibits, were sent by email to counsel for applicant <jjovanovic@watson-ip.com, docketing@watson-ip.com, sstumpo@watson-ip.com> on this the 19th day of April 2021.

/Jason DeFrancesco /  
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