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

Proceeding no.	91267937
Party	Plaintiff Alpha Kappa Alpha Sorority
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Date	11/07/2023
Attachments	AKA Response to Motion for Summary Judgment.pdf(29641 bytes)

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

In the Matter of **STROLL TO THE POLLS** Ser. No. 90/012,428

Alpha Kappa Alpha Sorority	)	
	)	
Opposer,	)	
	)	
	)	Opposition No. 91,267,937
	)	
v.	)	
	)	
	)	
Stroll to the Polls, Inc.	)	
	)	
Applicant.	)	
_____	)	

RESPONSE TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT

Stroll to the Polls, Inc.'s ("STTP") motion for summary judgment ("Motion") seeks to dispose of a ground for opposition that Alpha Kappa Alpha Sorority ("AKA") is not alleging, namely, priority and a likelihood of confusion under Trademark Act Section 2(d). *See* 23 TTABVUE (operative Notice of Opposition). AKA's opposition is based on its position that (1) "stroll to the polls" fails to function as a trademark because it is a commonplace political slogan, and (2) is merely ornamental. Accordingly, AKA's own use of "stroll to the polls" is irrelevant to the opposition.

Even if a likelihood of confusion was one of the grounds for AKA's opposition – which it is not – summary judgment would be inappropriate.

"Summary judgment is appropriate where the movant demonstrates that there is no genuine dispute as to any material fact, and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A party asserting that a fact cannot be true or is genuinely disputed must support its assertion by either: (1) citing to materials in the record; or (2) showing that the

materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." *A&H Sportswear Co., Inc. v. Yedor*, Opp. No. 91235843, 2019 WL 1453071 (TTAB March 29, 2019).

STTP failed to cite to anything in the record that proves there is no genuine dispute regarding AKA's use of "stroll to the polls." Its Motion merely states that, "**[o]n information and belief**, the documents marked as AKA00000789-806 is not evidence of Opposer's continuous use of Applicant's Mark or any confusingly similar indicia, in particular in connection with Class 25 goods" and "**[o]n information and belief**, Opposer did not directly sell the items depicted in the documents marked as AKA00000789-806." Motion at 5 (emphasis added.) Merely stating, without evidence and "on information and belief," that no dispute exists does not make it so.

STTP has failed to meet its burden of establishing there is no genuine dispute of material fact regarding AKA's use of "stroll to the polls." More importantly, likelihood of confusion is not one of the grounds on which AKA bases its opposition. Accordingly, the Motion should be denied.

Dated: November 7, 2023

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSE TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT was served upon the counsel for Stroll to the Polls, Inc. identified below by email on November 7, 2023:

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