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

Proceeding no.	91281645
Party	Defendant Pray Not Prey Apparel, LLC
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Submission	Motion to Dismiss - Rule 12(b)
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Date	12/06/2022
Attachments	Pray Not Prey Motion to Dismiss.pdf(133870 bytes)

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

Lee S. Dickinson)
Opposer,)
v.) Opposition No. 91281645
Pray Not Prey Apparel, LLC)
Applicant.)
_____)

**APPLICANT’S MOTION TO DISMISS OPPOSER’S
NOTICE OF OPPOSITION**

Pursuant to 37 C.F.R. § 2.116(a) and Rule 12(b)(6) of the Federal Rules of Civil Procedure, Applicant Pray Not Prey Apparel, LLC (“Applicant”) hereby moves the Board to dismiss Opposer’s Notice of Opposition with prejudice for failure to state a claim upon which relief may be granted. Applicant’s Motion embodies its Brief in Support as required by 37 C.F.R. § 2.127(a).

ARGUMENT

A motion to dismiss for failure to state a claim upon which relief may be granted is a test solely of the legal sufficiency of the complaint. *Space Base Inc. v. Stadis Corp.*, 17 U.S.P.Q.2d 1216, 1218 (TTAB 1990). In order to withstand such a motion, a pleading must allege such facts as would, if proved, establish that the opposer is entitled to the relief sought, that is, that (1) the opposer has standing to maintain the proceeding, and (2) a valid statutory ground exists for opposing the application. *Young v. AGB Corp.*, 47 U.S.P.Q.2d 1752, 1754 (Fed. Cir. 1998). The notice of opposition must set forth a short and plain statement showing why the opposer believes it is or will be damaged by the registration of the subject mark and state the grounds for

opposition. 37 C.F.R. § 2.104(a). An opposer's pleading must include enough detail to give the applicant fair notice of the basis for each claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007); *Fair Indigo LLC v. Style Conscience*, 85 U.S.P.Q. 2d 1536, 1538 (TTAB 2007).

In this case, Opposer's Notice of Opposition is unquestionably defective. First, although Opposer claims ownership of U.S. Registration No. 5,886,020, Opposer did not attach a status and title copy of the registration to his Notice. As such, Applicant does not know (1) whether Opposer is the owner of this registration, (2) when this registration was issued, (3) the underlying application filing date of this registration, (4) the products/services recited in this registration, and (5) whether this registration is valid and subsisting. Second, the Notice does not speak to the issue of priority whatsoever. And, finally, the format of the Notice is not in compliance with the Board's rules. The Notice primarily consists of two sentences, both of which contain multiple allegations. The two numbered statements between these sentences completely fail to allege priority or likelihood of confusion. Applicant cannot reasonably be expected to file an answer to such a hodgepodge of allegations and averments without the risk of prejudicing itself.

CONCLUSION

In view of the foregoing, Applicant respectfully moves the Board to issue an order dismissing Opposer's Notice of Opposition with prejudice for failure to state a claim upon which relief may be granted.

Respectfully submitted,

PRAY NOT PREY APPAREL, LLC

By: _____ /met20/

Dated: _____ 12/6/2022

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served by emailing said copy on _____ 12/6/2022 _____ to:

Lee S. Dickinson

Opposer

leesdickinson@gmail.com

lee@iamanempress.com

_____/met20/
Morris E. Turek, Attorney for Applicant