

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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MBM/AJL/RA

July 12, 2023

Opposition No. 91283146

*Bump Health, Inc*

*v.*

*Zhou Cheng*

**By the Trademark Trial and Appeal Board:**

For reasons further specified herein, the below order supersedes the decision in the Board's June 7, 2023 order (7 TTABVUE).

**I. Background**

Opposer opposed registration of the BITTY PAW words-plus-design mark, for some, but not all, of the identified goods in International Class 5.<sup>1</sup> 1 TTABVUE. The ESTTA cover sheet of the notice of opposition lists, among other opposed goods, “gauze” as an opposed good. 1 TTABVUE 1. Although the Board views the ESTTA filing form and the attached pleading as comprising a single document or paper being filed with the Board, *see PPG Indus. Inc. v. Guardian Indus. Corp.*, 73 USPQ2d 1926, 1928 (TTAB 2005), the notice of opposition is devoid of any allegations that the good

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<sup>1</sup> Application Serial No. 97179189 was filed on December 18, 2021 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), asserting use of several goods in International Class 5 and providing a specimen described as “[g]auze online sales print page printout.”

“gauze” is opposed. To the contrary, the notice of opposition specifically identifies the opposed goods in paragraphs 8, 9, and 17 of the notice of opposition, which clearly exclude “gauze” as an opposed good. *See* 1 TTABVUE 4-6, ¶¶ 8-9, 17. In view thereof, “gauze” as mentioned on the ESTTA cover sheet is insufficient to constitute opposition of “gauze.” *See Embarcadero Techs. Inc. v. RStudio Inc.*, 105 USPQ2d 1825, 1827 n.2 (TTAB 2013) (mere mention of a ground on the ESTTA cover sheet is insufficient to constitute a claim). Accordingly, “gauze” as an opposed good on the ESTTA cover sheet of the notice of opposition is **stricken**. *See NSM Res. Corp. v. Microsoft Corp.*, 113 USPQ2d 1029, 1039 n.19 (TTAB 2014) (Board may sua sponte dismiss any insufficiently pleaded pleading); *see also* Fed. R. Civ. P. 12(f).

Consequently, the opposed goods (“Opposed Goods”) and unopposed goods (“Unopposed Goods”) are as follows:

**Opposed Goods:**

Adult diapers; Babies’ swim diapers; Breast pads; Diapers for dogs; Diapers for incontinence; Incontinence garments; Incontinence pads; Infant cloth diapers; Infant diaper covers; Inserts specially adapted for cloth infant diapers made of microfiber; Nursing pads; Panty liners; Sanitary napkins; Sanitary panties.

**Unopposed Goods:**

Gauze; All purpose deodorizing preparations for household, commercial or industrial use; Belts for sanitary napkins; Flea collars; Preparations to prevent chewing or biting by animals

Following Applicant’s failure to timely file an answer and Applicant’s failure to timely file a response to the Board’s notice of default, on May 2, 2023, the Board issued a decision entering default judgment against Applicant, sustaining the opposition, and refusing registration to Applicant. 5 TTABVUE. On June 7, 2023, the

Board issued a correction to its May 2, 2023 order to reflect that default judgment, the refusal of registration to Applicant, and the sustaining of the opposition pertain solely to certain goods. 7 TTABVUE. However, the Board's June 7, 2023 order, issued prior to "gauze" being stricken from the ESTTA cover sheet of the notice of opposition, identified "gauze" as an opposed good against which judgment issued and registration was refused.

## **II. Correction to Previously Issued Board Decisions and Board Decision**

By this order, the Board now further corrects its prior decisions in this proceeding to decide as follows:

Judgment by default is hereby entered against Applicant, the opposition is sustained, and registration to Applicant is refused only for the Opposed Goods, i.e., "Adult diapers; Babies' swim diapers; Breast pads; Diapers for dogs; Diapers for incontinence; Incontinence garments; Incontinence pads; Infant cloth diapers; Infant diaper covers; Inserts specially adapted for cloth infant diapers made of microfiber; Nursing pads; Panty liners; Sanitary napkins; Sanitary panties." *See* Fed. R. Civ. P. 55(b), and Trademark Rule 2.106(a).

Application Serial No. 97179189 will go forward for issuance of a registration for the Unopposed Goods, i.e. "Gauze; All purpose deodorizing preparations for household, commercial or industrial use; Belts for sanitary napkins; Flea collars; Preparations to prevent chewing or biting by animals," only.