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

Proceeding	92051386
Party	Defendant Jay-Y Enterprise Co., Inc.
Correspondence Address	Jay-Y Enterprise Co., Inc. 632 New York Drive Pomona, CA 91768 UNITED STATES
Submission	Motion to Suspend for Civil Action
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Signature	/Constance R. Lindman/
Date	09/24/2009
Attachments	Motion-to-Suspend-for-Civil-Action-9-24-09.pdf ( 2 pages )(22976 bytes ) 036-Second-Amended-Complaint-6-16-09.pdf ( 25 pages )(767271 bytes ) 038-Defendant's-Answer-to-Amended-Complaint-and-Counterclaim-6-17-09.pdf ( 5 pages )(45195 bytes ) 040-Plaintiff's-Answer-to-Defendants-Amended-Counterclaim-6-19-09.pdf ( 5 pages )(44396 bytes )

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

Time Plaza, Inc.,	)		
	)		
Petitioner	)	Cancellation No.:	92051386
	)		
versus	)	Registration No.:	3,418,299
	)		
Jay-Y Enterprise Co., Inc.,	)	Mark:	LOCS
	)		
Registrant	)		
_____	)		

**MOTION TO SUSPEND FOR CIVIL ACTION**

Registrant Jay-Y Enterprise Co., Inc. (“Registrant”) moves the Board to suspend this proceeding pursuant to TBMP §510.02(a). The parties hereto are engaged in a civil action in the Federal District Court for Central District of California which may have a bearing on this proceeding. Registrant’s complaint in the federal court action alleges that Petitioner is infringing Registrant’s rights in the mark LOCS, US Reg. No. 3,418,299 – the same registration that is the subject of this proceeding. Petitioner has filed a counterclaim in the federal court action asking the court to cancel the registration. The decision in the federal action will often be binding upon the Board, while the decision of the Board is not binding upon the federal court. For this reason, and in the interest of judicial economy, this proceeding should be suspending pending the outcome of the federal court action.

Copies of the following relevant documents in Case No. CV08-07600 FMC(RZx) pending in the Central District of California are attached:

- Second Amended Complaint for Trademark Infringement, Patent Infringement, and Related Claims

- Defendants' Answer to the Second Amended Complaint and Counterclaim to Cancel Trademark
- Plaintiff's Answer to Defendants' Amended Counterclaim

Respectfully Submitted,

By: s/Constance R. Lindman  
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION TO SUSPEND FOR CIVIL ACTION was served by email this 24<sup>th</sup> day of September, 2009 on Jen-Feng Lee, WorldEsquire Law Firm, 80 S. Lake Avenue, Suite 708, Pasadena, CA 91101

s/Constance R. Lindman  
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13 Attorneys for Plaintiff  
14 JAY-Y ENTERPRISE CO., INC.

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA

17 JAY-Y ENTERPRISE CO., INC.,

18 Plaintiff,

19 v.

20 TIME PLAZA, INC., AAB  
21 ENTERPRISE, INC., TRIO BROTHERS  
22 TRADING USA, INC., SOUTH BAY  
23 TRADING, INC., SA TRADING, INC.,  
24 WWW.SUNSHARKEYEWEAR.COM,  
25 MICHAEL QIN, and DOES 1-10,

26 Defendants.

Case No. CV08-07600 FMC(RZx)

**SECOND AMENDED  
COMPLAINT FOR  
TRADEMARK INFRINGEMENT,  
PATENT INFRINGEMENT, AND  
RELATED CLAIMS**

**DEMAND FOR JURY TRIAL**

27 Plaintiff JAY-Y ENTERPRISE CO., INC. brings this Complaint against  
28 Defendants TIME PLAZA, INC., AAB ENTERPRISE, INC., TRIO BROTHERS  
TRADING USA, INC., SOUTH BAY TRADING, INC., SA TRADING, INC.,  
WWW.SUNSHARKEYEWEAR.COM, and MICHAEL QIN (collectively,  
“Defendants”), to halt Defendants’ ongoing infringement of Plaintiff’s valuable  
trademark and patent rights. In support of its Complaint, Plaintiff alleges:

1  
2 Parties, Jurisdiction and Venue

3 1. Plaintiff is a California corporation with its principal place of business  
4 within this district, located at 632 New York Dr., Pomona, California 91768.  
5 Plaintiff is primarily in the business of designing, developing, marketing,  
6 distributing and selling sunglasses.

7 2. On information and belief, Defendant TIME PLAZA, INC. (“Time  
8 Plaza”) is a California corporation with its principal place of business within this  
9 district, located at 9329 Klingerman Street, South El Monte, California 91733.

10 3. On information and belief, Defendant AAB ENTERPRISE CO., INC.  
11 (“AAB Enterprise”) is a California corporation with its principal place of business  
12 within this district, located at 350 S. Los Angeles St., Los Angeles, CA 90013.

13 4. On information and belief, Defendant TRIO BROTHERS TRADING  
14 USA, INC. (“Trio Brothers Trading”) is a now-dissolved California corporation  
15 with its principal place of business within this district, located at 605 S Milliken  
16 Avenue Suite E, Ontario, California 91761. Trio Brothers Trading was operating  
17 at all times relevant herein and, on information and belief, was dissolved by  
18 affirmative action of the corporation pursuant to a Certificate of Dissolution dated  
19 June 19, 2008 in an attempt to shield itself and its shareholders from liability for its  
20 wrongful conduct. On information and belief, at all times relevant herein, the  
21 Chief Executive Officer, Secretary, Chief Financial Officer, sole director, and  
22 registered agent of Trio Brothers Trading was defendant Michael Qin.

23 5. This Complaint is brought against Trio Brothers Trading pursuant to  
24 Cal. Corp. Code section 2011 which authorizes this court to enforce causes of  
25 action against a dissolved corporation, whether arising before or after the  
26 dissolution of the corporation, to the extent of its undistributed assets, including,  
27 without limitation, insurance assets held by the corporation that may be available  
28 to satisfy claims. This Complaint is further brought against the unidentified

1 shareholders of Trio Brothers Trading, sued in the corporate name pursuant to Cal.  
2 Corp. Code section 2011(a)(3), and as DOES 1-10.

3 6. On information and belief, Defendant SOUTH BAY TRADING INC.  
4 (“South Bay Trading”) is a California corporation with its principal place of  
5 business within this district, located at the same address as Trio Brothers Trading,  
6 namely, 605 S Milliken Avenue Suite E, Ontario, California 91761. On  
7 information and belief, at all times relevant herein, the Chief Executive Officer,  
8 Secretary, Chief Financial Officer, sole director, and registered agent of South Bay  
9 Trading is defendant Michael Qin.

10 7. On information and belief, Defendant SA TRADING, INC. (“SA  
11 Trading”) is a California corporation with its principal place of business within this  
12 district, located at 1523 Big Sur Lane, West Covina, California 91791. On  
13 information and belief, at all times relevant herein, the Chief Executive Officer,  
14 Secretary, Chief Financial Officer, sole director, and registered agent of SA  
15 Trading is defendant Michael Qin. On information and belief, SA Trading  
16 imported sunglasses from China in late June 2008, shortly after Trio Brothers  
17 Trading was dissolved.

18 8. On information and belief, Defendant  
19 WWW.SUNSHARKEYWEAR.COM (“Sun Shark Eyewear”) is an  
20 unincorporated business operating within this district, located at the same address  
21 as Trio Brothers and South Bay Trading, namely, 605 S Milliken Avenue Suite E,  
22 Ontario, California 91761. The www.sunsharkeyewear.com domain name is  
23 registered to both Trio Brothers Trading and Defendant Michael Qin. The Sun  
24 Shark Eyewear web site home page prominently bears the word “Trio” above a  
25 drawing of sunglasses and states in smaller type at the bottom of the page  
26 “powered by: Trio Eyewear.”

27 9. On information and belief, Defendant MICHAEL QIN is an  
28 individual residing within this district and doing business within this district at 605

1 S Milliken Avenue Suite E, Ontario, California 91761 and at 1523 Big Sur Lane,  
2 West Covina, California 91791.

3 10. On information and belief, Sun Shark Eyewear was owned and  
4 operated by Trio Brothers Trading until Trio Brothers Trading was dissolved. On  
5 information and belief, Sun Shark Eyewear is now owned and operated by one or  
6 more of the following: Michael Qin, South Bay Trading, or SA Trading.

7 11. On information and belief, the business that Trio Brothers Trading  
8 engaged in prior to its dissolution is now being carried on by one or more of the  
9 following successor entities or individuals: South Bay Trading, SA Trading, Sun  
10 Shark Eyewear and Michael Qin. On information and belief, Trio Brothers  
11 Trading, South Bay Trading, SA Trading, and Sun Shark Eyewear are all alter egos  
12 of Michael Qin and of one another.

13 12. On information and belief each of the defendants Trio Brothers  
14 Trading, South Bay Trading, SA Trading, Sun Shark Eyewear and Michael Qin  
15 (collectively referred to herein as "Qin Defendants") have acted and are acting in  
16 concert with each other to directly commit or to assist each other to commit the  
17 wrongful activities alleged herein.

18 13. On information and belief, there has existed a unity of interest and  
19 ownership between and among the Qin Defendants such that any individuality and  
20 separateness between and among the Qin Defendants has ceased, and such that  
21 each is the alter ego of the others; in that:

22 A. Each of the Qin Defendants has at certain relevant times  
23 completely controlled, led, dominated, managed and operated each of the other Qin  
24 Defendants, and has intermingled his, her or its own assets with those of the other  
25 Qin Defendants to suit his, her or its convenience.

26 B. Each of the Qin Defendants has used assets of each of the other  
27 Qin Defendants for his, her or its own use, and has caused or will cause the assets  
28

1 of each of the other Qin Defendants to be transferred to him, her or it without  
2 adequate consideration.

3 C. Each of the Qin Defendants is, and at all times herein  
4 mentioned was, a mere shell, instrumentality, and conduit through which the other  
5 Qin Defendants each has carried on its businesses, exercising complete control and  
6 dominance of the Qin Defendants to such an extent that any individuality or  
7 separateness of the defendants does not, and at all times herein mentioned did not,  
8 exist.

9 D. Each of the Qin Defendants is, and at certain relevant times  
10 was, a mere shell and sham without sufficient capital or assets, or that its  
11 capitalization was trifling, compared with the business to be done and the risks of  
12 loss attendant thereto.

13 E. Each of the Qin Defendants was intended, and was used by  
14 each of the other Qin Defendants as a device to avoid the imposition of liability,  
15 and for the purpose of substituting a financially insolvent company in his, her, or  
16 its place.

17 F. Adherence to the fiction of the separate existence of each of the  
18 Qin Defendants as a distinct entity would permit an abuse of the corporate  
19 privilege and would sanction fraud and promote injustice in that certain of the Qin  
20 Defendants have distributed or will distribute a substantial portion of their assets to  
21 certain other Qin Defendants without adequate consideration, all for the purpose of  
22 avoiding and preventing attachment and execution by creditors of each of the Qin  
23 Defendants, including Plaintiff, thereby rendering each of the Qin Defendants  
24 insolvent and unable to meet its obligations.

25 14. Plaintiff is ignorant of the true names and capacities of the Defendants  
26 sued herein as Does 1 to 10, and therefore sue these Defendants by their fictitious  
27 names. On information and belief, DOES 1-10 (the "Trio Shareholders") are the  
28 individuals or entities that owned the shares of Trio Brothers Trading at the time of



1 its dissolution and/or are managing agents of Trio Brothers Trading with direct  
2 involvement in the conduct alleged. Plaintiffs will amend this Complaint to allege  
3 the true names and capacities of Does 1 to 10 when ascertained.

4 15. This Complaint is brought against the Trio Shareholders pursuant to  
5 Cal. Corp. Code section 2011, which provides in pertinent part that, if assets of a  
6 dissolved corporation have been distributed to the shareholders, a cause of action  
7 against the corporation arising either before or after the dissolution may be  
8 enforced against the shareholders to the extent of their pro rata share of the claim  
9 or to the extent of the corporate assets distributed to them on dissolution,  
10 whichever is less.

11 16. On information and belief, at all times relevant herein, each Defendant  
12 was the agent, servant, employee, principal, successor, alter ego, and/or partner of  
13 each other Defendant, acting within the course and scope of such capacities and  
14 with the permission and consent of each other in doing the acts and engaging in the  
15 conduct alleged herein. Wherever in this pleading reference is made to any act of a  
16 Defendant, such allegation shall be deemed to mean the acts of the Defendants  
17 named in that particular cause of action, and each of them, acting individually,  
18 jointly and severally.

19 17. This Complaint arises under the Lanham Act, 15 U.S.C. § 1051, et.  
20 seq., the United States Patent Act, 35 U.S.C. § 1, et. seq., California Business and  
21 Professions Code Sections 14200 et. seq., and under the common law. This Court  
22 has jurisdiction over Plaintiff's federal claims pursuant to 15 U.S.C. § 1121 and 28  
23 U.S.C. §§ 1331 and 1338(a). Jurisdiction over Plaintiff's state law claims and  
24 common law unfair competition claim lies under 28 U.S.C. §§ 1338(b) and  
25 1367(a).

26 18. Venue is proper under 28 U.S.C. § 1391(b).  
27  
28

1 Plaintiff's Trademark and Patent Rights

2 19. Plaintiff first adopted and began using the LOCS mark no later than  
3 September 1, 2005. Plaintiff has used the LOCS mark as a trademark in  
4 connection with sunglasses continuously since then.

5 20. Plaintiff applied for United States Trademark Registration No.  
6 3,418,299 for the LOCS mark on January 26, 2006. United States Trademark  
7 Registration No. 3,418,299 for the LOCS mark issued to Plaintiff on April 29,  
8 2008. A copy of this registration is attached as Exhibit A.

9 21. Plaintiff is the owner of United States Patent Registration No.  
10 D545,348 for a sunglasses design. A copy of this registration is attached as  
11 Exhibit B.

12 Defendant Time Plaza's Wrongful Conduct

13 22. On information and belief, Defendant Time Plaza began using the  
14 LOCS mark in connection with sunglasses on February 1, 2007, seventeen (17)  
15 months after Plaintiff began selling sunglasses bearing the LOCS mark and more  
16 than a year after Plaintiff applied for United States Trademark Registration No.  
17 3,418,299 for the LOCS mark. Defendant Time Plaza is not, and never has been,  
18 authorized by Plaintiff to use the LOCS mark.

19 23. On information and belief, Defendant Time Plaza applied for  
20 California State Trademark Registration No. 0112431 for the LOCS mark for "sun-  
21 glasses and eye-glasses" on February 27, 2007. A copy of this registration is  
22 attached as Exhibit C.

23 24. On information and belief, Defendant Time Plaza had actual  
24 knowledge of Plaintiff's use of the LOCS mark in connection with sunglasses at the  
25 time Defendant adopted and began using the LOCS mark.

26 25. On information and belief, Defendant Time Plaza applied for and  
27 registered California State Trademark Registration No. 0112431 for the LOCS  
28 mark in violation of the Model State Trademark Law as adopted in California.

1           26. On information and belief, Defendant Time Plaza procured California  
2 State Trademark Registration No. 0112431 for the LOCS mark by declaring that to  
3 its “best knowledge and belief no other person firm, corporation, union or  
4 association has the right to use said mark in this state, either in identical form or in  
5 such near resemblance thereto as might be calculated to deceive or confuse”  
6 knowing such that declaration was false and fraudulent.

7           27. Defendant Time Plaza’s use of the LOCS mark in connection with  
8 sunglasses is likely to cause confusion or mistake or to deceive the consuming  
9 public into believing that Defendant Time Plaza is affiliated, connected, sponsored,  
10 approved, or otherwise associated with Plaintiff.

11           28. On information and belief, Defendant Time Plaza began selling  
12 sunglasses that fall within the scope of Plaintiff’s United States Patent Registration  
13 No. D545,348 after Plaintiff obtained United States Patent Registration No.  
14 D545,348. Defendant Time Plaza is not, and never has been, authorized by  
15 Plaintiff to sell sunglasses that fall within the scope of United States Patent  
16 Registration No. D545,348.

17           29. Plaintiff requested in several letters and conversations since April  
18 2008 that Defendant Time Plaza cease using the LOCS mark, assign California  
19 State Trademark Registration No. 0112431 to Plaintiff, and cease selling  
20 sunglasses that fall within the scope of Plaintiff’s United States Patent Registration  
21 No. D545,348. Defendant Time Plaza has refused to comply with Plaintiff's  
22 requests.

23                                   Defendant AAB Enterprise’s Wrongful Conduct

24           30. On information and belief, on or around March 16, 2009 Defendant  
25 AAB Enterprise attempted to import twenty-one-thousand sunglasses bearing the  
26 LOCS mark. In May, 2009 Plaintiff received the notice that such shipment was  
27 seized by U.S. Customs and Border Protection.

28

1 31. On information and belief, Defendant AAB Enterprise intended to  
2 distribute and sell, either at retail or wholesale, the sunglasses seized in March  
3 2009 bearing the LOCS mark. On information and belief Defendant AAB  
4 Enterprise has imported, distributed and sold in the past, and unless enjoined will  
5 continue to import, distribute and sell, sunglasses bearing the LOCS mark.  
6 Defendant AAB Enterprise is not, and never has been, authorized by Plaintiff to  
7 use the LOCS mark.

8 32. On information and belief, Defendant AAB Enterprise had actual and  
9 constructive knowledge of Plaintiff's use and registration of the LOCS mark in  
10 connection with sunglasses at the time Defendant AAB Enterprise began  
11 importing, distributing and selling sunglasses bearing the LOCS mark.

12 33. Defendant AAB Enterprise's use of the LOCS mark in connection  
13 with sunglasses is likely to cause confusion or mistake or to deceive the consuming  
14 public into believing that Defendant AAB Enterprise is affiliated, connected,  
15 sponsored, approved, or otherwise associated with Plaintiff.

16 The Qin Defendants' Wrongful Conduct

17 34. On information and belief, the Qin Defendants began using the LOCS  
18 mark in connection with sunglasses after Plaintiff began selling sunglasses bearing  
19 the LOCS mark. The Qin Defendants are not, and never have been, authorized by  
20 Plaintiff to use the LOCS mark.

21 35. On information and belief, the Qin Defendants had actual knowledge  
22 of Plaintiff's use of the LOCS mark in connection with sunglasses at the time the  
23 Qin Defendants adopted and began using the LOCS mark.

24 36. The Qin Defendants' use of the LOCS mark in connection with  
25 sunglasses is likely to cause confusion or mistake or to deceive the consuming  
26 public into believing that the Qin Defendants are affiliated, connected, sponsored,  
27 approved, or otherwise associated with Plaintiff.

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1 37. On information and belief, the Qin Defendants began selling  
2 sunglasses that fall within the scope of Plaintiff's United States Patent Registration  
3 No. D545,348 after Plaintiff obtained United States Patent Registration No.  
4 D545,348. The Qin Defendants are not, and never have been, authorized by  
5 Plaintiff to sell sunglasses that fall within the scope of United States Patent  
6 Registration No. D545,348.

7 38. Plaintiff requested in several letters and conversations since April  
8 2008 that Defendant Trio Brothers Trading cease using the LOCS mark and cease  
9 selling sunglasses that fall within the scope of Plaintiff's United States Patent  
10 Registration No. D545,348. Defendant Trio Brothers Trading has refused to  
11 comply with Plaintiff's requests.

12 Plaintiff's Harm from Defendants' Wrongful Conduct

13 39. As a result of the aforesaid acts of Defendant Time Plaza and the Qin  
14 Defendants, Plaintiff has suffered and continues to suffer substantial damages and  
15 irreparable injury.

16 40. Plaintiff has no adequate remedy at law and, unless Defendant Time  
17 Plaza and the Qin Defendants are restrained and enjoined by this Court, said acts  
18 will continue to cause damage and irreparable injury to Plaintiff and to its goodwill  
19 and business reputation.

20 41. Plaintiff cannot ascertain the precise amount of its damages at this  
21 time.

22 **FIRST CLAIM FOR RELIEF**

23 FEDERAL TRADEMARK INFRINGEMENT  
24 IN VIOLATION OF § 32 OF THE LANHAM ACT  
(Against All Defendants)

25 42. Plaintiff repeats and realleges Paragraphs 1 to 41.

26 43. Defendants' activities, as alleged above, constitute intentional and  
27 willful infringement of Plaintiff's rights in and to its federally registered LOCS  
28 mark, in violation of Lanham Act § 32, 15 U.S.C. § 1114.

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**SECOND CLAIM FOR RELIEF**  
FALSE DESIGNATION OF ORIGIN  
IN VIOLATION OF § 43(a) OF THE LANHAM ACT  
(Against All Defendants)

44. Plaintiff repeats and realleges Paragraphs 1 to 41.

45. Defendants' activities, as alleged above, constitute unfair competition and false designation of origin in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a).

**THIRD CLAIM FOR RELIEF**  
IMPROPER REGISTRATION  
IN VIOLATION OF MODEL STATE TRADEMARK LAW  
(Against Defendant Time Plaza, Inc.)

46. Plaintiff repeats and realleges Paragraphs 1 to 41.

47. Defendant Time Plaza improperly and fraudulently obtained California State Trademark Registration No. 0112431 in violation of Article 2 Section 14205(f) of the Model State Trademark Law, as adopted in California (Bus & Prof. Code § 14205(f)).

48. Based on the foregoing, Defendant is liable to pay all damages sustained as a consequence of the filing or registration, pursuant to Section 14240 of the Model State Trademark Law, as adopted in California (Bus & Prof. Code § 14240).

49. Based on the foregoing, Plaintiff is entitled to an order canceling Defendant's registration, pursuant to Section 14254 of the Model State Trademark Law, as adopted in California (Bus & Prof. Code § 14254).

**FOURTH CLAIM FOR RELIEF**  
COMMON LAW UNFAIR COMPETITION  
(Against All Defendants)

50. Plaintiff repeats and realleges Paragraphs 1 to 41.

51. Defendant Time Plaza's and the Qin Defendants' activities, as alleged above, constitute unfair competition in violation of the common law.

1 52. Based on the foregoing, Plaintiff is entitled to an order enjoining  
2 Defendants from continuing to commit the wrongful conduct alleged.

3 **FIFTH CLAIM FOR RELIEF**  
4 **PATENT INFRINGEMENT**  
5 **IN VIOLATION OF § 271 OF THE U.S. PATENT ACT**  
6 **(Against All Defendants except AAB Enterprise, Inc.)**

7 53. Plaintiff repeats and realleges Paragraphs 1 to 36.

8 54. Defendant Time Plaza's and the Qin Defendants' activities, as alleged  
9 above, constitute patent infringement in violation of the United States Patent Act,  
10 35 U.S.C. § 271.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff respectfully requests that the Court enter an Order:

13 (A) Enjoining Defendant Time Plaza, Defendant AAB Enterprise  
14 and the Qin Defendants and each of their servants, employees, agents,  
15 representatives, affiliates and all persons acting on behalf or at the direction  
16 of, or in concert or participation with, each of them from:

17 (i) Using any trademark, service mark, or trade name  
18 incorporating the LOCS mark, or which is confusingly similar to the  
19 LOCS mark;

20 (ii) Representing in any manner that any of Defendants'  
21 goods or services are affiliated, connected, sponsored, approved or  
22 otherwise associated with Plaintiff, or vice versa; and

23 (iii) Taking any other action likely to cause confusion,  
24 mistake or deception as to the source or origin of Defendants' goods  
25 or services or of Plaintiff's goods or services.

26 (B) Enjoining Defendant Time Plaza and the Qin Defendants and  
27 each of their servants, employees, agents, representatives, affiliates and all  
28 persons acting on behalf or at the direction of, or in concert or participation  
with, each of them from infringing United States Patent No. D545,348.

1 (C) Directing Defendant Time Plaza, Defendant AAB Enterprise  
2 and each Qin Defendant to file with the Court and serve on Plaintiff within  
3 thirty days after entry and service on Defendant of such injunction a report  
4 in writing under oath setting forth in detail the manner and form in which  
5 Defendant has complied with the injunction;

6 (D) Requiring Defendant Time Plaza, Defendant AAB Enterprise  
7 and the Qin Defendants to deliver up to Plaintiff for destruction all labels,  
8 signs, prints, business cards, forms, packages, wrappers and all advertising  
9 or promotional material in the possession, custody, or control of Defendants  
10 bearing the LOCS mark or any other name or mark which is confusingly  
11 similar to the LOCS mark, as well as all plates, molds, matrices, and other  
12 means of making the same;

13 (E) Canceling California State Trademark Registration No.  
14 0112431;

15 (F) Requiring Defendant Time Plaza and the Qin Defendants to  
16 deliver up to Plaintiff for destruction all products infringing United States  
17 Patent No. D545,348 and all advertising or promotional material for such  
18 products in the possession, custody, or control of Defendants, as well as all  
19 plates, molds, matrices, and other means of making the same;

20 (G) Awarding Plaintiff compensatory damages for its losses and an  
21 accounting of Defendant Time Plaza's, Defendant AAB Enterprise's and the  
22 Qin Defendants' profits from its acts of infringement and unfair competition,  
23 including interest thereon, and trebling such award of profits and damages  
24 because of the deliberateness and willfulness of Defendants' acts;

25 (H) Requiring Defendant Time Plaza, Defendant AAB Enterprise and  
26 the Qin Defendants to pay Plaintiff's reasonable costs and attorneys' fees  
27 incurred in this action;  
28



1 (I) With respect to the dissolved corporation Trio Brothers  
2 Trading, enforcing the judgment of this Court to the extent of Trio Brothers  
3 Trading's undistributed assets, including, without limitation, insurance  
4 assets held by Trio Brothers Trading that may be available to satisfy claims;

5 (J) With respect to the dissolved corporation Trio Brothers  
6 Trading, enforcing the judgment of this Court against each of the Trio  
7 Shareholders to the extent of their pro rata share of the claim or to the extent  
8 of the corporate assets distributed to them on dissolution, whichever is less;  
9 and

10 (K) Awarding Plaintiff such other and further relief as this Court  
11 deems just and proper.

12 Respectfully Submitted,

13 Dated: May 26, 2009

14 OVERHAUSER LAW OFFICES, LLC

15  
16 By: s/Paul B. Overhauser  
17 Paul B. Overhauser, Esq.

18 Gregg A. Rapoport  
19 BUSINESS LEGAL PARTNERS,  
20 Attorneys at Law, Law Corp.

21 Attorneys for Plaintiff  
22 JAY-Y ENTERPRISE CO., INC.  
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

Dated: May 26, 2009

OVERHAUSER LAW OFFICES, LLC

By: s/Paul B. Overhauser  
Paul B. Overhauser, Esq.

Gregg A. Rapoport  
BUSINESS LEGAL PARTNERS,  
Attorneys at Law, Law Corp.

Attorneys for Plaintiff  
JAY-Y ENTERPRISE CO., INC.

Exhibit A	Plaintiff's US Trademark Reg. No. 3,418,299 for LOCS
Exhibit B	Plaintiff's US Design Patent Reg. No. D545,348 for eyeglasses
Exhibit C	Defendant Time Plaza's California Trademark Reg. No. 0112431 for LOCS

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 3,418,299

United States Patent and Trademark Office

Registered Apr. 29, 2008

TRADEMARK  
PRINCIPAL REGISTER



JAY-Y ENTERPRISE CO., INC. (CALIFORNIA CORPORATION)  
632 NEW YORK DRIVE  
POMONA, CA 91768

THE MARK CONSISTS OF THE LETTERS L, O, C, AND S IN SPECIAL STYLIZED FONT.

FOR: SUNGLASSES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

SER. NO. 78-800,219, FILED 1-26-2006.

FIRST USE 9-1-2005; IN COMMERCE 9-1-2005.

JOHN WILKE, EXAMINING ATTORNEY



US00D545348S

(12) **United States Design Patent**  
Chen

(10) Patent No.: **US D545,348 S**  
(45) Date of Patent: **\*\* Jun. 26, 2007**

(54) **EYEGLASSES**  
(75) Inventor: **Ward Chen, Pomona, CA (US)**  
(73) Assignee: **Jay-Y Enterprises, Inc., Pomona, CA (US)**  
(\*\*) Term: **14 Years**  
(21) Appl. No.: **29/248,345**  
(22) Filed: **Aug. 11, 2006**  
(51) **LOC (8) Cl. .... 16-06**  
(52) **U.S. Cl. .... D16/326**  
(58) **Field of Classification Search ..... D16/300-330, D16/101, 332-338; D29/109-110; D24/110.2; 351/41, 44, 51-52, 62, 158, 92, 103-111, 351/156, 61, 114-119, 121-123; 2/426-432, 2/447-449, 441, 436, 434-437**  
See application file for complete search history.

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(Continued)

*Primary Examiner*—Raphael Barkai  
(74) *Attorney, Agent, or Firm*—Overhauser Law Offices, LLC; Paul B. Overhauser; Dennis S. Schell

(57) **CLAIM**

I claim the ornamental design of the eyeglasses, as shown.

**DESCRIPTION**

FIG. 1 is a perspective view of the eyeglasses.  
FIG. 2 is a front view of the eyeglasses.  
FIG. 3 is a top view of the eyeglasses.  
FIG. 4 is a side view of the eyeglasses; and,  
FIG. 5 is a side view of the eyeglasses.

**1 Claim, 3 Drawing Sheets**

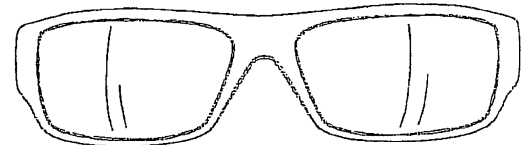
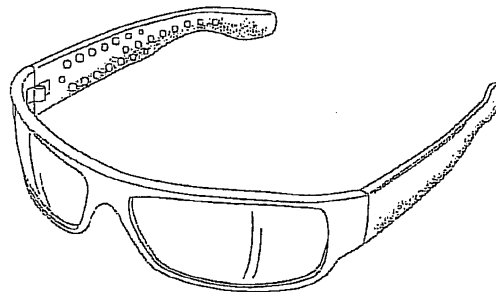


Exhibit B

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Page 2

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U.S. Patent

Jun. 26, 2007

Sheet 1 of 3

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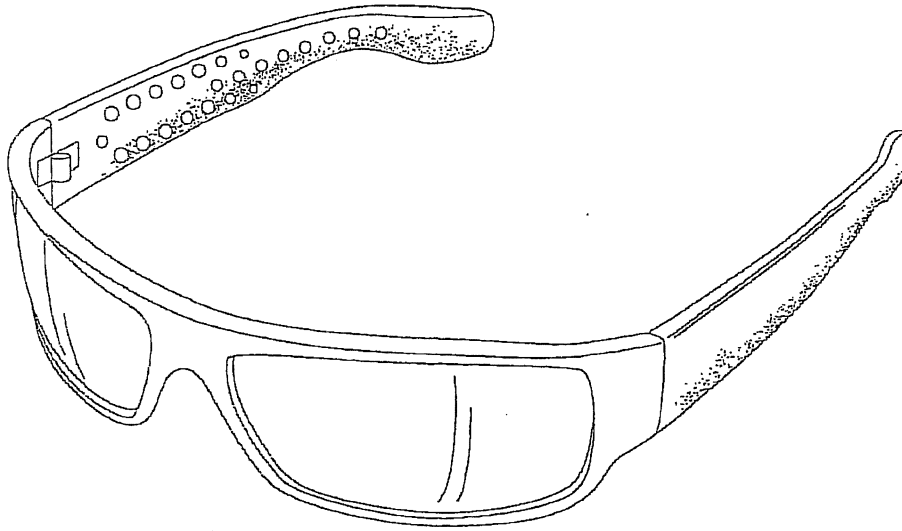


Fig. 1

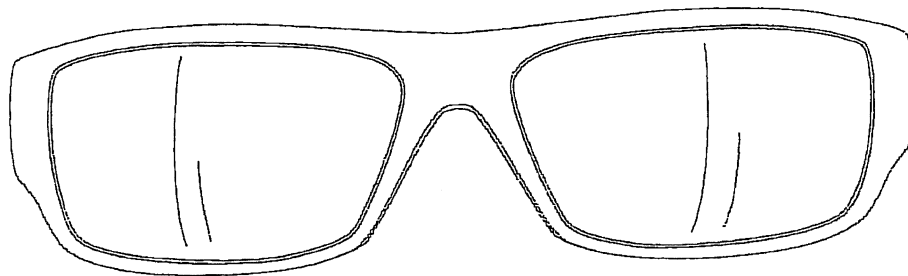


Fig. 2

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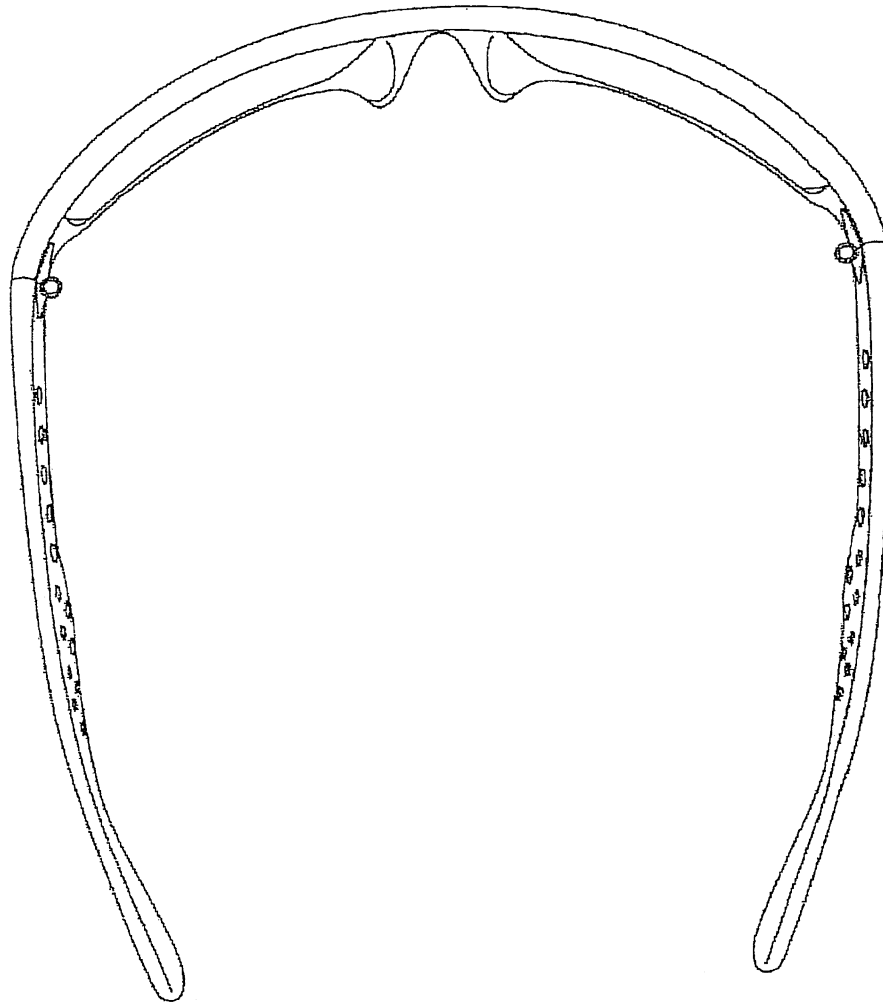


Fig.3

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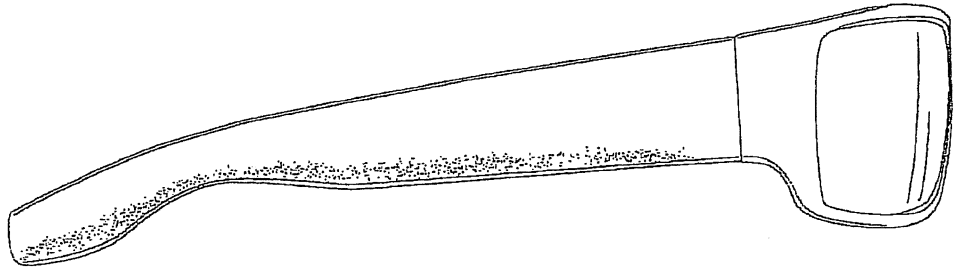


Fig. 4

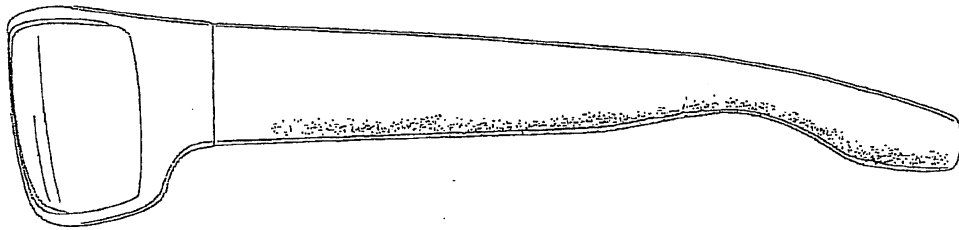


Fig. 5



7-14-08



State of California  
Secretary of State

I, DEBRA BOWEN, Secretary of State of the State of California,  
hereby certify:

That the attached transcript of 3 page(s) was prepared by and  
in this office from the record on file, of which it purports to be a copy, and  
that it is full, true and correct.

IN WITNESS WHEREOF, I execute this  
certificate and affix the Great Seal of the  
State of California this day of

JUL 10 2008



*Debra Bowen*

DEBRA BOWEN  
Secretary of State



# State of California Secretary of State


## REGISTRATION OF TRADEMARK OR SERVICE MARK

Pursuant to Business and Professions Code Section 14230

**NOTICE: READ ACCOMPANYING INSTRUCTIONS BEFORE COMPLETING THIS FORM**

REGISTRATION APPLICATION FOR:		<input checked="" type="checkbox"/> TRADEMARK	<input type="checkbox"/> SERVICE MARK
1. APPLICANT NAME TIME PLAZA, INC.			
2. STREET ADDRESS (PROVIDE CALIFORNIA BUSINESS ADDRESS IF SERVICE MARK) 9329 KLINGERMAN ST		3. CITY AND STATE SOUTH EL MONTE, CA	4. ZIP CODE 91733
5. BUSINESS STRUCTURE (CHECK ONE)			
<input type="checkbox"/> LIMITED PARTNERSHIP		<input type="checkbox"/> SOLE PROPRIETOR	
<input type="checkbox"/> LIMITED LIABILITY COMPANY		<input type="checkbox"/> HUSBAND AND WIFE, AS COMMUNITY PROPERTY	
<input type="checkbox"/> GENERAL PARTNERSHIP		<input type="checkbox"/> OTHER (DESCRIBE) _____	
<input checked="" type="checkbox"/> CORPORATION (STATE OF INCORPORATION) <u>CA</u>			
6. NAMES OF THE GENERAL PARTNERS, IF APPLICANT IS A PARTNERSHIP		7. NAMES OF MEMBER(S) OR MANAGER(S), IF APPLICANT IS A LIMITED LIABILITY COMPANY	
8. NAME AND/OR DESIGN OF MARK. (FOR DESIGN PROVIDE A BRIEF WRITTEN DESCRIPTION THAT CAN BE PICTURED IN THE MIND WITHOUT REFERENCE TO THE SPECIMENS. DO NOT DRAW THE DESIGN ON APPLICATION)			
The Trademark is made up of four hollowed letters: <u>LOCS</u> , and a darkened background.			
DISCLAIMER (IF APPLICABLE) NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE THE TERM:			
9. DATE THE MARK WAS FIRST USED IN CALIFORNIA 02/01/2007		DATE THE MARK WAS FIRST USED ANYWHERE 02/01/2007	
10. IF A TRADEMARK, LIST SPECIFIC GOODS. IF A SERVICE MARK, LIST SPECIFIC SERVICE.		THIS SPACE FOR FILING OFFICER USE  <b>TRADE/SERVICE MARK</b> REG. NO. <u>0112431</u> CLASS NO. <u>T.M. 21</u>	
Sun-glasses and eye-glasses.			
CLASS NUMBER <u>21</u> (ONE CLASSIFICATION NUMBER ONLY)			
11. RETURN ACKNOWLEDGMENT TO: (TYPE OR PRINT)			
NAME		<div style="border: 1px solid black; padding: 10px; width: fit-content; margin: auto;"> <p><b>FILED</b> In the office of the Secretary of State of the State of California  <b>FEB 27 2007</b></p> </div>	
ADDRESS			
CITY			
STATE			
ZIP CODE			
NAME: JAMES CHEN ADDRESS: 223 E. GARVEY AVE #148 CITY: MONTEREY PARK, CA 91755			
SEC/STATE LP/TM 101 (REV. 2/97)		FILING FEE: \$70.00	

(OVER)

<p><b>12. MANNER OF MARK USE.</b> CHECK ALL THAT APPLY.</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> <p><b><u>FOR TRADEMARKS ONLY</u></b></p> <p><input type="checkbox"/> ON LABELS AND TAGS AFFIXED TO THE GOODS.</p> <p><input type="checkbox"/> ON LABELS AND TAGS AFFIXED TO CONTAINERS OF THE GOODS.</p> <p><input checked="" type="checkbox"/> BY PRINTING IT DIRECTLY ONTO THE GOODS.</p> <p><input type="checkbox"/> BY PRINTING IT DIRECTLY ONTO THE CONTAINERS FOR THE GOODS.</p> <p><input type="checkbox"/> OTHER _____</p> </td> <td style="width: 50%; vertical-align: top; border: none;"> <p><b><u>FOR SERVICE MARKS ONLY</u></b></p> <p><input type="checkbox"/> ON BUSINESS SIGNS.</p> <p><input type="checkbox"/> ON ADVERTISING BROCHURES.</p> <p><input type="checkbox"/> ON ADVERTISING LEAFLETS.</p> <p><input type="checkbox"/> ON BUSINESS CARDS.</p> <p><input type="checkbox"/> ON LETTERHEADS.</p> <p><input type="checkbox"/> ON MENUS.</p> <p><input type="checkbox"/> OTHER _____</p> </td> </tr> </table>		<p><b><u>FOR TRADEMARKS ONLY</u></b></p> <p><input type="checkbox"/> ON LABELS AND TAGS AFFIXED TO THE GOODS.</p> <p><input type="checkbox"/> ON LABELS AND TAGS AFFIXED TO CONTAINERS OF THE GOODS.</p> <p><input checked="" type="checkbox"/> BY PRINTING IT DIRECTLY ONTO THE GOODS.</p> <p><input type="checkbox"/> BY PRINTING IT DIRECTLY ONTO THE CONTAINERS FOR THE GOODS.</p> <p><input type="checkbox"/> OTHER _____</p>	<p><b><u>FOR SERVICE MARKS ONLY</u></b></p> <p><input type="checkbox"/> ON BUSINESS SIGNS.</p> <p><input type="checkbox"/> ON ADVERTISING BROCHURES.</p> <p><input type="checkbox"/> ON ADVERTISING LEAFLETS.</p> <p><input type="checkbox"/> ON BUSINESS CARDS.</p> <p><input type="checkbox"/> ON LETTERHEADS.</p> <p><input type="checkbox"/> ON MENUS.</p> <p><input type="checkbox"/> OTHER _____</p>
<p><b><u>FOR TRADEMARKS ONLY</u></b></p> <p><input type="checkbox"/> ON LABELS AND TAGS AFFIXED TO THE GOODS.</p> <p><input type="checkbox"/> ON LABELS AND TAGS AFFIXED TO CONTAINERS OF THE GOODS.</p> <p><input checked="" type="checkbox"/> BY PRINTING IT DIRECTLY ONTO THE GOODS.</p> <p><input type="checkbox"/> BY PRINTING IT DIRECTLY ONTO THE CONTAINERS FOR THE GOODS.</p> <p><input type="checkbox"/> OTHER _____</p>	<p><b><u>FOR SERVICE MARKS ONLY</u></b></p> <p><input type="checkbox"/> ON BUSINESS SIGNS.</p> <p><input type="checkbox"/> ON ADVERTISING BROCHURES.</p> <p><input type="checkbox"/> ON ADVERTISING LEAFLETS.</p> <p><input type="checkbox"/> ON BUSINESS CARDS.</p> <p><input type="checkbox"/> ON LETTERHEADS.</p> <p><input type="checkbox"/> ON MENUS.</p> <p><input type="checkbox"/> OTHER _____</p>		
<p><b>13. SPECIMENS</b> CHECK ONE BOX BELOW. ENCLOSE THREE (3) IDENTICAL ORIGINAL SPECIMENS.</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> <p><b><u>FOR TRADEMARKS ONLY</u></b></p> <p><input checked="" type="checkbox"/> ACTUAL LABELS.</p> <p><input type="checkbox"/> ACTUAL TAGS.</p> <p><input type="checkbox"/> PHOTOGRAPHS OF THE GOODS/CONTAINERS SHOWING THE TRADEMARK.</p> <p><input type="checkbox"/> FRONT PANELS OF A PAPER CONTAINER BEARING THE TRADEMARK.</p> <p><input checked="" type="checkbox"/> OTHER <u>Enlarged version of the mark to be imprinted onto the "legs" of sunglasses and eyeglasses.</u></p> </td> <td style="width: 50%; vertical-align: top; border: none;"> <p><b><u>FOR SERVICE MARKS ONLY</u></b></p> <p><input type="checkbox"/> BUSINESS CARDS.</p> <p><input type="checkbox"/> ADVERTISING BROCHURES.</p> <p><input type="checkbox"/> ADVERTISING LEAFLETS.</p> <p><input type="checkbox"/> MENUS SHOWING THE MARK.</p> <p><input type="checkbox"/> OTHER _____</p> </td> </tr> </table>		<p><b><u>FOR TRADEMARKS ONLY</u></b></p> <p><input checked="" type="checkbox"/> ACTUAL LABELS.</p> <p><input type="checkbox"/> ACTUAL TAGS.</p> <p><input type="checkbox"/> PHOTOGRAPHS OF THE GOODS/CONTAINERS SHOWING THE TRADEMARK.</p> <p><input type="checkbox"/> FRONT PANELS OF A PAPER CONTAINER BEARING THE TRADEMARK.</p> <p><input checked="" type="checkbox"/> OTHER <u>Enlarged version of the mark to be imprinted onto the "legs" of sunglasses and eyeglasses.</u></p>	<p><b><u>FOR SERVICE MARKS ONLY</u></b></p> <p><input type="checkbox"/> BUSINESS CARDS.</p> <p><input type="checkbox"/> ADVERTISING BROCHURES.</p> <p><input type="checkbox"/> ADVERTISING LEAFLETS.</p> <p><input type="checkbox"/> MENUS SHOWING THE MARK.</p> <p><input type="checkbox"/> OTHER _____</p>
<p><b><u>FOR TRADEMARKS ONLY</u></b></p> <p><input checked="" type="checkbox"/> ACTUAL LABELS.</p> <p><input type="checkbox"/> ACTUAL TAGS.</p> <p><input type="checkbox"/> PHOTOGRAPHS OF THE GOODS/CONTAINERS SHOWING THE TRADEMARK.</p> <p><input type="checkbox"/> FRONT PANELS OF A PAPER CONTAINER BEARING THE TRADEMARK.</p> <p><input checked="" type="checkbox"/> OTHER <u>Enlarged version of the mark to be imprinted onto the "legs" of sunglasses and eyeglasses.</u></p>	<p><b><u>FOR SERVICE MARKS ONLY</u></b></p> <p><input type="checkbox"/> BUSINESS CARDS.</p> <p><input type="checkbox"/> ADVERTISING BROCHURES.</p> <p><input type="checkbox"/> ADVERTISING LEAFLETS.</p> <p><input type="checkbox"/> MENUS SHOWING THE MARK.</p> <p><input type="checkbox"/> OTHER _____</p>		
<p><b>14. DECLARATION OF OWNERSHIP</b></p> <p>APPLICANT HEREWITH DECLARES THAT HE/SHE HAS READ THE ABOVE AND FOREGOING APPLICATION AND KNOWS THE CONTENTS THEREOF AND THAT THE FACTS SET OUT HEREIN ARE TRUE AND CORRECT AND THAT THE THREE SPECIMENS OF THE MARK SUBMITTED ARE TRUE AND CORRECT, AND TO HIS/HER BEST KNOWLEDGE AND BELIEF NO OTHER PERSON, FIRM, CORPORATION, UNION OR ASSOCIATION HAS THE RIGHT TO USE SAID MARK IN THIS STATE, EITHER IN IDENTICAL FORM OR IN SUCH NEAR RESEMBLANCE THERETO AS MIGHT BE CALCULATED TO DECEIVE OR CONFUSE.</p>			
<p>NAME OF CORPORATION/PARTNERSHIP/LIMITED LIABILITY COMPANY (IF APPLICABLE)</p> <p>TIME PLAZA, INC. <span style="float: right;">0112431</span></p>			
<p>SIGNATURE OF APPLICANT</p> 	<p>IF PARTNER, MANAGER OR CORPORATE OFFICER, INCLUDE TITLE</p> <p>President</p>		
<p>TYPE OR PRINT NAME OF APPLICANT</p> <p>JAMES CHEN</p>	<p>DATE</p> <p>02/09/2007</p>		
<p><small>TYPE OR PRINT THE NAME AND ADDRESS OF THE PERSON OR FIRM TO RECEIVE THE ACKNOWLEDGEMENT OF THE FILING. SEND THE SIGNED APPLICATION WITH ORIGINAL SIGNATURE(S) TO THE SECRETARY OF STATE, TRADEMARK UNIT, P.O. BOX 944225, SACRAMENTO, CA 94244-2250 WITH THE \$70.00 FILING FEE.</small></p>			

0112431

**LOU**



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2 City of Industry, CA 91748-5797  
Phone (626) 839-0277  
3 Fax (626) 839-0322  
E-mail: usbinli@sbcglobal.net

4 Attorneys for  
5 TIME PLAZA, INC.

6 UNITED STATES DISTRICT COURT  
7 CENTRAL DISTRICT OF CALIFORNIA  
8

9 JAY-Y ENTERPRISE CO. INC.

10 Plaintiffs,

11 v.

12 TIME PLAZA, INC., AAB  
13 ENTERPRISE, INC., TRIO  
14 BROTHERS TRADING USA, INC.,  
SOUTH BAY TRADING, INC., SA  
15 TRADING, INC.,  
[WWW.SUNSHARKEYWEAR.COM](http://WWW.SUNSHARKEYWEAR.COM),  
MICHAEL QIN, and DOES 1-10

16 Defendants.  
17

} CASE NO: CV08-07600 FMC (RZx)  
}  
} **DEFENDANTS' ANSWER TO THE**  
} **SECOND AMENDED COMPLAINT**  
} **AND COUNTERCLAIM TO**  
} **CANCEL TRADEMARK**  
}  
} JURY TRIAL DEMANDED

18 1. Defendant TIME PLAZA, INC., AAB ENTERPRISE, INC.  
19 (“Defendants” and “Petitioners”), for themselves only, hereby respond to the  
20 *Second amended complaint* (“complaint”) filed by Plaintiff Jay-Y Enterprise Co.  
21 Inc. (“Plaintiff”) and counterclaims to cancel the LOCS federal trademark  
22 registration as follows:

23 2. Regarding paragraphs 1-16 of the complaint, these allegations relate to  
24 the identity of the parties and do not require a substantive response.

25 3. Regarding paragraphs 17-18 of the complaint, these allegations relate to  
26 jurisdiction and venue and do not require a substantive response.

27 4. Defendant does not have knowledge of the history of the usage of the  
28 trademark LOCS by Plaintiff, and therefore cannot admit or deny that Plaintiff is

1 the owner of the trademark referred to in paragraph 19.

2 5. Defendant does not have knowledge of the trademark history and cannot  
3 admit or deny that Jay-Y Enterprise Co. Inc. is the owner of the trademark  
4 mentioned in paragraph 20.

5 6. Defendant does not have knowledge of the trademark history and cannot  
6 admit or deny that Jay-Y Enterprise Co. Inc. is the owner of the trademark in  
7 paragraph 21.

8 7. Defendant denies the allegations of paragraph 22, as the date of first use  
9 of the Plaintiff is not known.

10 8. Defendant admits the facts stated in paragraph 23.

11 9. Defendant denies the allegations of paragraph 24 that Defendant had  
12 actual knowledge of Plaintiff's use of the LOCS mark with sunglasses when  
13 Defendant adopted and began using the LOCS mark.

14 10. Defendant denies the allegations of paragraph 25 that Defendant was in  
15 violation of the *Model State Trademark Law* as adopted by California.

16 11. Defendant denies the allegations of paragraph 26 that Defendant had  
17 knowledge of Plaintiff's use of the similar mark, and that the stated declaration was  
18 false and fraudulent.

19 12. Defendant denies the allegations of paragraphs 27 that there was false  
20 designation of origin arising from use of the trademarks.

21 13. Defendant denies the allegations of paragraphs 28 that it sold any  
22 sunglasses which fell into the scope of the Plaintiff's patent registration D545, 348  
23 and that it had actual knowledge of such incidents.

24 14. Defendant denies the allegations of paragraph 29 that it received such  
25 cease and desist letters or phone calls from Plaintiff as to the alleged trademark and  
26 patent infringements.

27 15. Defendant AAB can not deny or admit if Plaintiff received the notice of  
28

1 the shipment from US Custom and Border Protection in Paragraph 30.

2 16. Defendant AAB denies the facts alleged in paragraph 31 that it has  
3 imported distributed and sold sunglasses bearing LOCS mark in the past.

4 17. Defendant AAB denies the facts alleged in paragraph 32 that it had  
5 actual and constructive knowledge of Plaintiff's use and registration of the LOCS  
6 mark.

7 18. Defendant AAB denies the facts alleged in paragraph 33 that the marks  
8 are confusingly similar and likely to cause confusion to consumers.

9 19. With reference to paragraphs 34-38, the allegations were against other  
10 defendants. Defendant has no connection, awareness or knowledge as to the  
11 allegations, and hence can not deny or admit the allegations.

12 20. Defendant denies the allegations of paragraph 39 as to the damages and  
13 injury.

14 21. Defendant denies the allegations of paragraph 40 that Plaintiff has no  
15 adequate remedy at law, and restraining order is necessary as the claimed  
16 infringement is frivolous in nature.

17 22. Defendant denies the allegations of paragraph 41 as to the  
18 unascertainable damage, or that plaintiff has suffered any damage at all.

19 23. Defendant denies the allegations of paragraphs 42-43 that Defendant  
20 infringed Plaintiff's trademark under *Lanham Act*, Section 32 [15 U.S.C. Sec.  
21 1114].

22 24. Defendant denies the allegations of paragraphs 44-45 that there was  
23 false designation of origin and unfair competition arising from the alleged  
24 trademark infringement.

25 25. Defendant denies the allegations of paragraphs 46-49 that Defendant's  
26 registration of the LOCS mark was improper, fraudulent and in violation of the  
27 *Model State Trademark Law*, and that Defendant has to be restrained from using  
28

1 the mark, and pay plaintiff damages.

2 26. Defendant denies the allegations of paragraphs 50-52 that there was a  
3 violation of the *California Unfair Competition Law* and that Plaintiff is entitled to  
4 a restraining order.

5 27. Defendant denies the allegations of paragraphs 53-54 that Defendant's  
6 activities constitute federal patent infringement.

7  
8 **AFFIRMATIVE DEFENSES**

9 **FIRST AFFIRMATIVE DEFENSE**

10 28. Plaintiff's complaint and every purported claim fail to allege facts  
11 sufficient to maintain claims against this answering Defendant.

12 **SECOND AFFIRMATIVE DEFENSE**

13 29. Plaintiff's asserted trademark is descriptive in nature and is not  
14 inherently distinctive and has not acquired secondary meaning to be distinctive.

15 **THIRD AFFIRMATIVE DEFENSE**

16 30. Plaintiff's asserted registered trademarks are generic or merely  
17 descriptive.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 31. Plaintiff's asserted registered patents are invalid for obviousness and  
20 anticipation.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 32. Plaintiff's claim is barred to the extent that its patents failed to mark the  
23 goods.

24  
25 **PRAYER FOR RELIEF**

26 33. Defendant prays that plaintiff take nothing by reason of its complaint,  
27 and that this answering defendant be given a judgment for costs incurred and for  
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1 such other and further relief as the court may deem just and proper.

2  
3 JURY TRIAL DEMANDED

4 34. Defendant demands a jury trial.

5  
6 COUNTERCLAIM TO CANCEL LOCS TRADEMARK

7 35. The above-identified petitioner believes that its business operations  
8 will be damaged by the above-identified federal trademark registration of LOCS,  
9 and hereby petitions to cancel the same.

10  
11  
12 36. The grounds for cancellation are as follows:

13 37. Plaintiff's asserted trademark is descriptive in nature and is not  
14 inherently distinctive and has not acquired secondary meaning to be distinctive.  
15

16 38. Plaintiff's asserted registered patents are invalid for obviousness and  
17 anticipation.  
18

19 39. Wherefore, Defendant requests that this Court cancel the federal  
20 registration of the LOCS trademark.

21 Respectfully submitted,

22 Dated: 6/16/2009

23 By: /Bin Li/  
24 Bin Li, Attorney for Defendant  
25 Time Plaza, Inc.  
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27 City of Industry, CA 91748  
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(626)-839-0322 fax  
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9 737 Green Meadows Dr., Ste. 300  
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11 Tel. 317-891-1500  
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13 Attorneys for Plaintiff and Counterdefendant  
14 JAY-Y ENTERPRISE CO., INC.

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA

17 JAY-Y ENTERPRISE CO., INC.,

18 Plaintiff,

19 v.

20 TIME PLAZA, INC., AAB  
21 ENTERPRISE, INC., TRIO BROTHERS  
22 TRADING USA, INC., SOUTH BAY  
23 TRADING, INC., SA TRADING, INC.,  
24 WWW.SUNSHARKEYWEAR.COM,  
25 MICHAEL QIN, and DOES 1-10,

26 Defendants.

Case No. CV08-07600 FMC(RZx)

**PLAINTIFFS ANSWER TO  
DEFENDANTS AMENDED  
COUNTERCLAIM**

**DEMAND FOR JURY TRIAL**

27 Plaintiff/Counterdefendant JAY-Y ENTERPRISE CO., INC. (“Plaintiff”)  
28 for its answer to the Counterclaim of TIME PLAZA, INC. and AAB  
ENTERPRISE, INC. (“Defendants”), filed on June 17, 2009, provide the following  
admissions and denials of the factual allegations made in the Counterclaim, in

1 numbered paragraphs corresponding to the numbered paragraphs of the  
2 counterclaim as follows:

3  
4 35. The above-identified petitioner believes that its business operations will  
5 be damaged by the above-identified federal trademark registration of  
6 LOCS, and hereby petitions to cancel the same.

7 Answer: The factual allegations of Paragraph 2 are denied.

8 36. The grounds for cancellation are as follows:

9 Answer: Paragraph 36 states no factual allegations. Therefore Plaintiff  
10 neither admits nor denies.

11 37. Plaintiff's asserted trademark is descriptive in nature and not inherently  
12 distinctive and has not acquired secondary meaning to be distinctive.

13 Answer: Paragraph 37 is denied.

14 38. Plaintiff's asserted registered patents are invalid for obviousness and  
15 anticipation.

16 Answer: Paragraph 38 is denied.

17 39. Wherefore, Defendant requests that this Court cancel the LOCS federal  
18 registration of the trademark LOCS.

19 Answer: Plaintiff asserts there is no basis for cancellation of its United  
20 States Trademark Registration for LOCS and design and such registration  
21 should not be cancelled and therefore denies this Paragraph 39 to the extent  
22 it contains any factual allegations.

23 Wherefore, Plaintiff requests that this Court deny Defendants' Counterclaim.

24 **AFFIRMATIVE DEFENSES**

25 Plaintiff asserts the following affirmative defenses:

26 **FIRST AFFIRMATIVE DEFENSE**

27 The Counterclaim fails to state a claim upon which relief can be granted.  
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SECOND AFFIRMATIVE DEFENSE

Defendants' damages, if any, have been caused in whole or in part by the actions of other parties.

THIRD AFFIRMATIVE DEFENSE

Defendants are barred from obtaining relief by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Defendants are barred from obtaining relief by the doctrine of laches.

Respectfully Submitted,

Dated: June 19, 2009

BUSINESS LEGAL PARTNERS,  
Attorneys at Law, Law Corp.

By: /s/ Gregg A. Rapoport  
Gregg A. Rapoport

OVERHAUSER LAW OFFICES, LLC  
Paul B. Overhauser

Attorneys for Plaintiff and Counterdefendant  
JAY-Y ENTERPRISE CO., INC.

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DEMAND FOR JURY TRIAL

Plaintiff and Counterdefendant JAY-Y ENTERPRISE CO., INC.

hereby demands a jury trial.

BUSINESS LEGAL PARTNERS,  
Attorneys at Law, Law Corp.

By: /s/ Gregg A. Rapoport  
Gregg A. Rapoport

OVERHAUSER LAW OFFICES, LLC  
Paul B. Overhauser

Attorneys for Plaintiff and Counterdefendant  
JAY-Y ENTERPRISE CO., INC.

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**PROOF OF SERVICE**

I, Ziza Delgado, am over the age of 18 years and not a party to this action.

Upon my oath, I hereby state that the foregoing

**PLAINTIFFS ANSWER TO DEFENDANTS AMENDED COUNTERCLAIM TO CANCEL PLAINTIFFS TRADEMARK; DEMAND FOR JURY TRIAL**

is being filed electronically, and notice hereof will automatically be sent to all counsel of record that participate in electronic filing, by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. In addition, if any attorneys are not participating in electronic filing, they are identified below and have been mailed, via first-class postage, notice hereof on the date this document is being electronically filed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 19, 2009

By:   
\_\_\_\_\_  
Ziza Delgado