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

Proceeding	92063808
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DOUBLE COIN HOLDINGS, LTD,)	Cancellation No. 92063808
)	
Petitioner,)	
)	
v.)	
)	
TRU DEVELOPMENT,)	
)	
Registrant.)	

PETITIONER’S MOTION FOR SUMMARY JUDGMENT

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	2
II. STATEMENT OF THE CASE	3
III. SUMMARY OF ARGUMENT	5
IV. ARGUMENT	7
A. Summary Judgment Standard.	7
B. There Are No Genuine Issues of Material Fact Supporting Tru Development’s Counterclaim.	8
C. Uncontroverted Facts Establish A Likelihood of Confusion.	10
1. Tru Development’s Trademark Creates A Likelihood of Confusion Under <i>DuPont</i> Factors.	10
2. Priority of the WARRIOR Mark Is Clearly Established.	11
3. Double Coin Has No Intent To Abandon WARRIOR.	11
V. CONCLUSION	16

TABLE OF AUTHORITIES

	<u>Page</u>
FEDERAL CASES	
<i>Adidas AGV v. Etonic Holdings, LLC</i> , 12 USPQ 2D 1188 (TTAB 2016)	6
<i>American Dirigold Corp. v. Dirigold Metals Corp.</i> , 125 F.2d 446, 52 USPQ 510 (6 th Cir. 1942)	13
<i>American Motors Corp. v. Action-Age, Inc.</i> , 178 USPQ 377 (TTAB 1973)	15
<i>Bond v. Taylor</i> , 119 USPQ 2d 1049 (TTAB 2016)	6
<i>Care Fusion 2200, Inc. v. Entrotech Life Scis., Inc.</i> , 119 USPQ 2d 1492 (TTAB 2016)	10
<i>CBS Inc. v. Morrow</i> , 708 F.2d 1579, 218 USPQ 198 (Fed. Cir. 1983)	6
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1987)	7
<i>Cerveceria Centroamericana, S.A. v. Cerveceria India, Inc.</i> , 892 F.2d 1021, USPQ 2d 1307 (Fed. Cir. 1989)	13 12
<i>Chandon Champagne Corp. v. San Marino Wine Corp.</i> , 335 F.2d 531, 142 USPQ 239 (2d Cir. 1964)	13
<i>Clubman’s Club Corporation v. Martin</i> , 188 USPQ 455, 1975 WL 20849 (TTAB 1975)	(TTAB 14
<i>Colgate-Palmolive Co. v. Sanford Chemical Co.</i> , 162 USPQ 424 (TTAB 1969)	14
<i>Columbia Industries, Inc. v. Tiffany & Co.</i> , 497 F.2d 1358, 182 USPQ 205 (CCPA 1974)	2
<i>Continental Distilling Corp. v. Old Charter Distillery Co.</i> , 188 F.2d 614, USPQ 365 (D.C. Cir. 1950)	87 13
<i>Cuban Cigar Brands N.V. v. Upmann International, Inc.</i> , 457 F. Supp. 1090, USPQ 193	199 13
<i>Defiance Button Mach. Co. v. C & C Metal Prods. Corp.</i> , 759 F.2d 1053, 225 USPQ 797 (2d Cir. 1985)	15

<i>Emergency One Inc. v. American FireEagle Ltd.</i> , 56 USPQ 2d 1343 (4 th Cir. 2000)	14, 15
<i>Haviland & Co. v. Johann Haviland China Corp.</i> , 269 F. Supp. 928, 154 USPQ 287 (S.D.N.Y. 1967)	13
<i>Hewlett-Packard Co. v. Packard Press, Inc.</i> , 281 F.3d 1261, 62 USPQ 198 (Fed. Cir. 2002)	6
<i>In re E.I. du Pont de Nemours & Co.</i> , 476 F.2d 1357, 177 USPQ 563 1973)	(CCPA 5, 10
<i>In re Mighty Leaf Tea</i> , 601 F.3d 1342 (Fed. Cir. 2010)	6
<i>In re Morinaga Nyugyo Fabuskeki Kaisha</i> , 120 USPQ 2d 1740 (TTAB 2014)	6
<i>Libya v. Miski</i> , 889 F. Supp. 2d 144, 103 USPQ 2d 1927 (D.D.C. 2012)	13
<i>Margaret Wendt Foundation Holdings, Inc. v. Roycroft Associates</i> , 84 USPQ 2d 1690, 2007 WL 3015224 (W.D.N.Y. 2007)	14
<i>Menendez v. Faber, Coe & Gregg, Inc.</i> , 345 F. Supp. 527, 174 USPQ 80 (S.D.N.Y. 1972)	13
<i>Merry Hull & Co. v. Hi-Line Co.</i> , 243 F. Supp. 45, 146 USPQ 274 (S.D.N.Y. 1965) ..	13
<i>Miliken & Company v. Image Indus, Inc.</i> , 39 USPQ 2d 1192 (TTAB 1996)	7
<i>Miller Brewing Co. v. Oland's Breweries (1971), Ltd.</i> , 548 F.2d 349, USPQ 266 (C.C.P.A. 1976)	192 13
<i>Rivard v. Linville</i> , 133 F.3d 1446, 45 USPQ 2d 1374 (Fed. Cir. 1998)	12
<i>Roulo v. Russ Berrie & Co.</i> , 886 F.2d 931, 12 USPQ 2d 1423 (7 th Cir. 1989) ...	12, 14
<i>Saratoga Vichy Spring Co., Inc. v. Lehman</i> , 625 F.2d 1037, 208 USPQ 175 (2d Cir. 1980)	12, 14
<i>Seidelmann Yachts, Inc. v. Pace Yacht Corp.</i> , 14 USPQ 2d 1497 (D. Md. 1989), 13 USPQ 2d 2025 (4 th Cir. 1990)	aff'd, 14
<i>Societe de Developments et D'Innovations des Marches Agricoles et Alimentaires</i> - <i>SODIMA - Union de Cooperatives Agricoles v. International Yogurt, Co.</i> , 662 F. Supp. 839, 3 USPQ 2d 1641 (D. Or. 1987)	- 12

<i>Star-Kist Foods, Inc. v. P.J. Rhoades & Co.</i> , 769 F.2d 1393, 227 USPQ 44 (9 th Cir. 1985)	14
<i>Stephen M. Silverman v. CBS Inc.</i> , 870 F.2d 40, 9 USPQ 2d 1778 (2 nd Cir. 1989) ..	14
<i>Sterling Brewers, Inc. v. Schenley Industries, Inc.</i> , 441 F.2d 675, 169 USPQ 590 (C.C.P.A. 1971)	13
<i>Stern Apparel Corp. v. Raingard, Inc.</i> , 87 F. Supp. 621, 83 USPQ 293 (D.N.Y. 1949)	13
<i>Stetson v. Howard D. Wolf & Assocs.</i> , 955 F.2d 874, 21 USPQ 2d 1783 (2d. Cir. 1992)	12
<i>Sweats Fashions, Inc. v. Pannill Knitting Co.</i> , 833 F.2d 1560, 4 USPQ 2d 1793 (Fed. Cir. 1987)	7
<i>Zelinski v. Columbia 300, Inc.</i> , 335 F.3d 633, 67 USPQ 2d 1446, 62 Fed. R. Evid. Serv. 665 (7 th Cir. 2003)	14

STATE CASES

<i>Leventhal v. Ollie Morris Equipment Corp.</i> , 184 Cal. App. 2d 553, 7 Cal Rptr. 911, 127 USPQ 96 (2d Dist. 1960)	13
<i>Olympia Brewing Co. v. Northwest Brewing Co.</i> , 178 Wash. 533, 35 P. 2d 104 (1934)	13
<i>Vaudable v. Montmartre, Inc.</i> , 20 Misc. 2d 757, 193 N.Y.S.2d 332, 123 USPQ 357 (1959)	13

FEDERAL STATUTES

Lanham Act Sec. 33, 15 U.S.C. §1115(b)(2) 3

Lanham Act Sec. 14, 15 U.S.C. § 1064 3, 5

Lanham Act Sec. 15, 15 U.S.C. §1065 2

Lanham Act Sec. 2(d), 15 U.S.C. § 1052(d) 10

Lanham Act Sec. 45, 15 U.S.C. §1127 4, 5, 10-12, 16

Trademark Act § 2(d) 2, 4, 16

FEDERAL RULES

Fed. R. Civ. P. 56 2, 7

TBMP 578.01 7

TMEP § 901.02 16

Trademark Rules of Practice Rule 2.127(e) 2

OTHER AUTHORITIES

McCarthy, J. Thomas, *McCarthy on Trademarks and Unfair Competition*,
(Thomson Reuters) 4th Ed., Vol. 3, 20:17 (Dec. 2016) 11

United States Department of Commerce International Trade Administration Investigation
No. A-570-016, *Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck
Tires from the People’s Republic of China* (January 20, 2015) 3, 8-10

United States Department of Commerce International Trade Administration Investigation
No. A-570-016, *Notice of Preliminary Determination in the Antidumping Duty
Investigation of Certain Passenger Vehicle and Light Truck Tires from the
People’s Republic of China*, 80 FR 4250 (January 27, 2015) 3, 8, 10

United States Department of Commerce International Trade Administration Investigation
No. A-570-160 *Notice of Final Determination in the Antidumping Duty*

*Investigation of Ceratin Passenger Vehicle and
the People's Republic of China, 80 FR 34893*

*Light Truck Tires from
(June 18, 2015) 3, 10*

United States Department of Commerce International Trade Administration Investigation
No. A-570-160 *Decision Memorandum for the Final Determination in the
Antidumping Duty Investigation of Ceratin Passenger Vehicle and Light Truck
Tires from the People's Republic of China* (June 11, 2015) 3, 8-10

I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 56 and Rule 2.127(e) of the Trademark Rules of Practice, there being no genuine issue of material fact, Petitioner Double Coin Holdings, Ltd. (“Double Coin”) hereby moves for summary judgment in its favor on claims 1 through 7 asserted by Double Coin in its Petition (Dkt. #1) in this proceeding, namely, that Registrant Tru Development (“Tru Development”)’s United States Trademark Registration No. 4,805,521 for ROAD WARRIOR (“ROAD WARRIOR”) on tires is damaging to Double Coin under Trademark Act § 2(d) and should be cancelled.

Double Coin further moves for summary judgement to dismiss Tru Development’s counterclaims 1 through 5 asserted by Tru Development in its Answer To Petition For Cancellation And Counterclaim To Cancel Petitioner’s United States Trademark Registration No. 3,335,545 for WARRIOR (“WARRIOR”) (Dkt. #6) for, *inter alia*, tires, there being no genuine issue of material fact against the validity of WARRIOR, which trademark registration has become incontestible under Lanham Act Sec. 15, 15 U.S.C. §1065.

Specifically, Double Coin is entitled to summary judgment because (1) ROAD WARRIOR creates a likelihood of confusion with Double Coin’s WARRIOR registration when used on or in connection with tires; and because (2) the priority of WARRIOR is clearly established by virtue of the priority of the WARRIOR trademark registration and Double Coin’s prior use of the WARRIOR mark in commerce, *Columbia Industries, Inc. v. Tiffany & Co.*, 497 F.2d 1358, 182 USPQ 205 (CCPA 1974).

II. STATEMENT OF THE CASE

The operative pleading at this point is Double Coin's Petition for Cancellation (Dkt. #1) of ROAD WARRIOR, the goods of this contested trademark registration being "tires", and having a filing date of November 13, 2014 and an alleged date of first use of January 1, 2015, the Petition being based on the WARRIOR United States registration granted on November 13, 2007. In Tru Development's Answer (Dkt. #6) alleging various affirmative defenses, the only one of which that finds any possible basis under Lanham Act Sec. 14, 15 U.S.C. § 1064 is Affirmative Defense 1 alleging abandonment of the WARRIOR mark allegedly due to temporary suspension of use (Lanham Act Sec 33, 15 U.S.C. §1115(b)(2)), following United States Department of Commerce International Trade Administration Investigation No. A-570-016, *Notice of Preliminary Determination in the Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China*, 80 FR 4250 (January 27, 2015), United States Department of Commerce International Trade Administration Investigation No. A-570-016, *Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China* (January 20, 2015), United States Department of Commerce International Trade Administration Investigation No. A-570-160 *Notice of Final Determination in the Antidumping Duty Investigation of Ceratin Passenger Vehicle and Light Truck Tires from the People's Republic of China*, 80 FR 34893 (June 18, 2015) and United States Department of Commerce International Trade Administration ("ITA") Investigation No. A-570-160 *Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Ceratin Passenger Vehicle and Light Truck*

Tires from the People's Republic of China (June 11, 2015), which imposed a 87.99% duty on WARRIOR tires imported from China, rendering the suspension of use of WARRIOR excusable as a matter of law (Lanham Act Sec. 45, 15 U.S.C. §1127), Double Coin having the intention to resume use of WARRIOR in the United States by the fourth quarter of 2017. *See*, Declaration Under 37 C.F.R. § 2.0 of Dean Jin In Support Of Double Coin Holdings, Ltd.'s Motion For Summary Judgment (the "Jin Declaration") at ¶¶ 10-15 and Exhibits 1-7.

The period of suspension of use of WARRIOR is from April 16, 2015 to date. *See*, Declaration Under 37 C.F.R. § 2.0 of Zhi-Ming "Mike" Yang In Support Of Double Coin Holdings, Ltd.'s Motion For Summary Judgment (the "Yang Declaration") at ¶ 9, less than three years. There is no presumption of abandonment and the burden of proof on this issue is on Tru Development by a preponderance of the evidence.

Tru Development cannot demonstrate that ROAD WARRIOR has priority over WARRIOR. The ROAD WARRIOR mark creates a likelihood of confusion with the prior WARRIOR registration in the market. *See*, Registrant's Responses to Petitioner's First Set of Written Discovery (**Exhibit 1**). Those answers in hand, the record is now ripe to test the dispositive legal issue of Double Coin's standing to obtain relief under Trademark Act § 2(d). The record establishes that Double Coin never intended to

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abandon use of WARRIOR on tires pursuant to Lanham Act Sec. 45, 15 U.S.C. §1127, and still enjoys the priority of WARRIOR based on Double Coin's registration application having been filed in the U.S. Patent and Trademark Office on October 8, 2006 and its granted registration date of November 13, 2007.

III. SUMMARY OF ARGUMENT

Summary judgment is appropriate because there is no genuine issue of material fact disputing the likelihood of confusion of WARRIOR and ROAD WARRIOR, Double Coin's priority rights in WARRIOR nor evidence that Double Coin has abandoned or intended to abandon use of WARRIOR, therefore Double Coin is entitled to judgement as a matter of law.

Tru Development has presented no genuine issues of material fact to be resolved at trial in its Answer and Counterclaim (Dkt. #6) which asserts, in effect, that Double Coin has abandoned WARRIOR as a result of Double Coin's temporary suspension of use due to the imposition of duties by the ITA. Double Coin's temporary suspension of use of WARRIOR is, as a matter of law, excusable non-use, Lanham Act Sec. 45, 15 U.S.C. §1127. Tru Development's other defenses set forth in its Answer and Counterclaim (Dkt. #6) are without basis in Lanham Act Sec. 14, 15 U.S.C. §1064.

As further shown below, Tru Development's ROAD WARRIOR registration creates a likelihood of confusion with Double Coin's WARRIOR trademark as a matter of law. Whether a likelihood of confusion exists is determined on a case-by-case basis aided by the application of factors set out in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973) . "Not all of the *DuPont* factors are relevant to every case, and only factors of significance to the particular mark need be considered.",

In re Mighty Leaf Tea, 601 F.3d 1342 (Fed. Cir. 2010) at 1346. In this case, the *DuPont* factors relating to the goods being tires, the similarity of the goods and the similarity of the marks are determinative, *Bond v. Taylor*, 119 USPQ 2d 1049 (TTAB 2016), *Adidas AGV v. Etonic Holdings, LLC*, 12 USPQ 2D 1188, 1191 (TTAB 2016). Here, the marks are barely distinguishable. The tacking on of “Road” to “Warrior”, as done by Tru Development, does not distinguish since the goods are tires and are used primarily on roads.

It is well established that, “absent restrictions in the application and registration, goods and services are presumed to travel in the same class of purchasers.” *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ 1001 (Fed. Cir. 2002) (citing *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581, 218 USPQ 198 (Fed. Cir. 1983)), *In re Morinaga Nyugyo Fabuskeki Kaisha*, 120 USPQ 2d 1740 (TTAB 2014). The Board relies on this legal presumption in determining likelihood of confusion.

Double Coin is entitled to summary judgment as a matter of law on its Petition (Dkt. #1) based on the likelihood of confusion of WARRIOR and ROAD WARRIOR on tires.

Double Coin is further entitled to judgment as a matter of law as to Tru Development’s counterclaims because the priority of its WARRIOR mark is clearly established, the likelihood of confusion is established and Double Coin has demonstrated it not only has no intent to abandon WARRIOR, but is actively engaged

in resuming use of WARRIOR on tires in the United States. The Board should (1) grant Double Coin's instant motion for summary judgment and enter judgment cancelling ROAD WARRIOR, and (2) dismiss Tru Development's sole counterclaim.

IV. ARGUMENT

A. Summary Judgment Standard.

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); see TBMP 578.01. Summary judgment encourages the speedy resolution of cases, including trademark disputes. *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ 2d 1793, 1795 (Fed. Cir. 1987) (holding that summary judgment is a salutary method of disposition for trademark oppositions and cancellations). Rule 56(c) mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element that is essential to that party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1987). The non-moving party must set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). In appropriate cases, the Trademark Trial and Appeal Board does not hesitate to dispose of cases on summary judgment. *Miliken & Company v. Image Indus, Inc.*, 39 USPQ 2d 1192, 1996 (TTAB 1996).

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B. There Are No Genuine Issues of Material Fact Supporting Tru Development's Counterclaim.

Double Coin is organized under the laws of the People's Republic of China, Yang Declaration at ¶ 3. Double Coin's United States tire sales distributor is China Manufacturer's Alliance, LLC ("CMA"), a California limited liability company, Yang Declaration at ¶ 2. Double Coin holds a 52.4% shareholder interest in CMA, Yang Declaration at ¶ 3. Double Coin's parent company is the Huayi Group which holds a 65.66% shareholder interest in Double Coin, Yang Declaration at ¶ 4.

Double Coin manufactured WARRIOR tires in China long prior to January 1, 2015 and exported WARRIOR tires to the United States where CMA acted as the exclusive distributor to United States tire dealers who market the tires to the ultimate consumer, Yang Declaration at ¶ 2.

On July 21, 2014, the ITA published its Notice of Initiation of Investigation No. A-570-016 "Anticipating Investigation of Certain Passenger Vehicle and Light Truck Tires for the People's Republic of China" under 79 FR 42292, *ITA Notice of Preliminary Determination No. A-570-160*, January 27, 2015 at 4250.

ITA Preliminary Decision No. A-570-160, January 20, 2015 at page 13 established an anti-dumping duty of 87.94%. Double Coin was found to be government controlled, *ITA Preliminary Decision No. A-570-160*, January 20, 2015 at page 25. Other Chinese tire manufacturers were found to be free of government control and were accorded a lower "Separate Rate", *ITA Preliminary Decision No. A-570-160*, January 20, 2015 at Appendices I and II. The 87.99% rate was made final by *ITA Final Decision Memorandum No. A-570-160*, June 11, 2015, Comment 39 at pages 74-78.

In ITA *Preliminary Decision A-570-160*, the ITA determined that Double Coin was shown to be under *de facto* government control, ITA *Preliminary Decision A-570-160* at 25, and imposed an antidumping duty on Double Coin origin tires of 87.99%, ITA *Preliminary Decision A-570-160* at 13.

Subsequently, this antidumping duty was made final in the ITA *Final Decision No. A-570-160*, June 11, 2015 at 75-78. Lower duties were imposed on many non-government controlled Chinese tire exporters by grant of “separate status”, ITA *Preliminary Decision No. A-570-160*, January 20, 2015 at Appendices I and II, Jin Declaration ¶ 6.

Due to the prohibitive antidumping duty, Double Coin halted shipments of WARRIOR tires to the United States following ITA *Preliminary Decision No. A-570-016*, and CMA exhausted its WARRIOR tire inventory by April 2015, Jin Declaration ¶ 8 and Yang Declaration ¶ 9. In 2016 Double Coin’s parent, the Huayi Group, began the construction of a tire manufacturing facility in Thailand which will resume supply of WARRIOR tires to the United States, Jin Declaration Exhibits 1-7.

Based on its own documents produced in Registrant’s Responses to Petitioner’s First Set of Written Discovery (**Exhibit 1**), Tru Development also sells tires imported from the People’s Republic of China (**Exhibit 1**, Response to Request For Production No. 1, RW000022-RW000023). Tru Development’s source in China of ROAD WARRIOR tires is unknown. Tru Development pays an import duty of less than 25% (**Exhibit 1**, Responses to Requests For Production Nos. 1, 4. RW000043-RW000047). Tru Development’s tire supplier has been awarded separate status, given that ITA *Final*

Decision No. A-570-016 shows the maximum allowable rate of 87.99% was applied only to those Chinese tire exporters denied separate status.

A further reason that WARRIOR should not be cancelled is that there is nothing in the trade laws, nor in *ITA Notice of Preliminary Decision No. A-570-016*, *ITA Preliminary Decision Memorandum No. A-570-016*, *ITA Notice of Final Decision No. A-570-016* or *ITA Final Decision Memorandum No. A-570-016* which negates or restricts the narrow operation of Lanham Act Sec. 45. To the contrary, to cancel a trademark under the circumstances of the instant case would inject a new, non-statutory issue into the contentious trade relationship between the United States and the People's Republic of China.

C. Uncontroverted Facts Establish A Likelihood of Confusion.

1. Tru Development's Trademark Creates A Likelihood of Confusion Under DuPont Factors.

The conflicting registered trademarks are Double Coin's WARRIOR and Tru Development's ROAD WARRIOR. Confusion as to a source or origin is obviously likely, Lanham Act Sec. 2(d), 15 U.S.C. § 1052(d). The distinctive term is "Warrior". The "Road" term refers to the use of tires on the road and is likely to cause the average purchaser to believe that the tires emanate from the same source, *Care Fusion 2200, Inc. v. Entrotech Life Scis., Inc.*, 119 USPQ 2d 1492 (TTAB 2016). The *du Pont* factors establishing likelihood of confusion are clearly met. The mark and the goods are the same. The customer class and channels of commerce are the same. The goods are tires. The WARRIOR tires continue to travel the streets and roads of the country, exposing the mark to a wide swath of the populace. Current owners of WARRIOR tires

are likely to be misled at time of replacement by the presence of ROAD WARRIOR tires in the marketplace. CMA, Double Coin's United States WARRIOR tire distributor, sold WARRIOR tires in the United States prior to January 1, 2015 and prior to that date advertised WARRIOR tires on its website accessible to any prospective tire purchasers, Yang Declaration ¶¶ 6 and Exhibits 2 and 3.

2. Priority of the WARRIOR Mark Is Clearly Established.

Double Coin's United States distributor, CMA, sold WARRIOR tires prior to Tru Development's January 1, 2015 date of first use alleged in the ROAD WARRIOR registration, Yang Declaration ¶¶ 5.

Tru Development's ROAD WARRIOR should be cancelled based on Double Coin's preexisting ownership of WARRIOR, *see*, McCarthy, J. Thomas, *McCarthy on Trademarks and Unfair Competition*, (Thomson Reuters) 4th Ed., Vol. 3, 20:17, 20:66-20:72 (Dec. 2016).

3. Double Coin Has No Intent To Abandon WARRIOR.

Under the Lanham Act a trademark is abandoned when "its use has been discontinued with intent not to resume such use." Lanham Act Sec. 45, 15 U.S.C. § 1127. Thus, a party claiming that a mark has been abandoned must show non-use of the mark by the legal owner and no intent by that person or entity to resume use in the

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reasonably foreseeable future, *Stetson v. Howard D. Wolf & Assocs.*, 955 F.2d 874, 850, 21 USPQ 2d 1783 (2d. Cir. 1992). Non-use for three consecutive years constitutes *prima facie* evidence of abandonment, Lanham Act Sec. 45, 15 U.S.C. § 1127, and is inapplicable to the factual situation at hand.

Proof of three consecutive years of non-use thus creates a presumption - a mandatory inference of intent not to resume use. *See, Cervecería Centroamericana, S.A. v. Cervecería India, Inc.*, 892 F.2d 1021, 1025-26, 13 USPQ 2d 1307 (Fed. Cir. 1989), *Saratoga Vichy Spring Co. v. Lehman*, 625 F.2d 1037, 1044-45, 208 USPQ 2d 175 (2d Cir. 1980). That presumption is not triggered here since Double Coin temporarily halted shipment of WARRIOR tires to the United States in April 2015 and will resume such shipments by the fourth quarter of 2017, Jin Declaration ¶¶ 14 and 15. *See, Cervecería Centroamericana*, 892 F.2d at 1026, *Roulo v. Russ Berrie & Co.*, 886 F.2d 931, 938, 12 USPQ 2d 1423 (7th Cir. 1989), *Societe de Developments et D'Innovations des Marches Agricoles et Alimentaires - SODIMA - Union de Cooperatives Agricoles v. International Yogurt, Co.*, 662 F. Supp. 839, 845, 3 USPQ 2d 1641 (D. Or. 1987). The ultimate burden of proof (by a preponderance of the evidence) remains always on the challenger. *See, Rivard v. Linville*, 133 F.3d 1446, 1449, 45 USPQ 2d 1374 (Fed. Cir. 1998), *Cervecería Centroamericana*, 892 F.2d at 1026.

Double Coin, through its distributor CMA, temporarily ceased selling tires in the United States in April 2015 following the imposition of the 87.99% duty by the ITA, Jin Declaration ¶ 8 and Yang Declaration ¶ 8. It is not possible to compete with other tires which do not bear such a burdensome duty. The United States tire market has many tire sellers including those of domestic manufacture, those of Chinese origin which have

been granted the lower separate rate status by the ITA, and those tires originating in third countries. To overcome this competitive handicap, Double Coin's parent developed a plan to produce WARRIOR tires for the United States market in Thailand, Jin Declaration ¶¶10 and Exhibits 1-7. The Thailand facility is under construction and it is planned to go on line in the fourth quarter of 2017, at which time export of WARRIOR tires to the United States will resume, Jin Declaration ¶¶ 14 and 15. It is well settled that abandonment does not result from a temporary forced withdrawal from the market due to causes such as war,¹ severing of diplomatic ties or imposition of economic sanctions,² prohibition,³ a labor strike,⁴ bankruptcy,⁵ import problems,⁶ unprofitable

¹ *Vaudable v. Montmartre, Inc.*, 20 Misc. 2d 757, 193 N.Y.S.2d 332, 123 USPQ 357 (1959), *Chandon Champagne Corp. v. San Marino Wine Corp.*, 335 F.2d 531, 142 USPQ 239 (2d Cir. 1964), *Stern Apparel Corp. v. Raingard, Inc.*, 87 F. Supp. 621, 83 USPQ 293 (D.N.Y. 1949), *Haviland & Co. v. Johann Haviland China Corp.*, 269 F. Supp. 928, 154 USPQ 287 (S.D.N.Y. 1967), *Cuban Cigar Brands N.V. v. Upmann International, Inc.*, 457 F. Supp. 1090, 199 USPQ 193 (S.D.N.Y. 1978), *Menendez v. Faber, Coe & Gregg, Inc.*, 345 F. Supp. 527, 174 USPQ 80 (S.D.N.Y. 1972).

² *Libya v. Miski*, 889 F. Supp. 2d 144, 103 USPQ 2d 1927 (D.D.C. 2012).

³ *Olympia Brewing Co. v. Northwest Brewing Co.*, 178 Wash. 533, 35 P. 2d 104 (1934), *Continental Distilling Corp. v. Old Charter Distillery Co.*, 188 F.2d 614, 87 USPQ 365 (D.C. Cir. 1950).

⁴ *Sterling Brewers, Inc. v. Schenley Industries, Inc.*, 441 F.2d 675, 169 USPQ 590 (C.C.P.A. 1971).

⁵ *American Dirigold Corp. v. Dirigold Metals Corp.*, 125 F.2d 446, 52 USPQ 510 (6th Cir. 1942), *Merry Hull & Co. v. Hi-Line Co.*, 243 F. Supp. 45, 146 USPQ 274 (S.D.N.Y. 1965), *Leventhal v. Ollie Morris Equipment Corp.*, 184 Cal. App. 2d 553, 7 Cal Rptr. 911, 127 USPQ 96 (2d Dist. 1960).

⁶ *Miller Brewing Co. v. Oland's Breweries (1971), Ltd.*, 548 F.2d 349, 192 USPQ 266 (C.C.P.A. 1976).

sales,⁷ being sued for patent infringement,⁸ or some other involuntary action,⁹ provided the user resumes use within a reasonable time following passage of the external cause. Double Coin has concrete plans to resume use of the WARRIOR mark on tires in the United States by the fourth quarter 2017, Jin Declaration ¶¶ 14 and 15.

In *Emergency One Inc. v. American FireEagle Ltd.*, 56 USPQ 2d 1343, 1347 (4th Cir. 2000), Emergency One Inc. (“E-One”) manufactured fire trucks under the mark “American Eagle”. Defendant American FireEagle Ltd. established that E-One had discontinued use of the “American Eagle” mark by mid-1992 when it ceased production of new “American Eagle” fire trucks. However, E-One produced evidence that it intended to resume use of the mark on fire trucks. The owner of a trademark cannot defeat an abandonment claim by asserting a subjective intent to resume use of a mark at some unspecified future date. See, *Stephen M. Silverman v. CBS Inc.*, 870 F.2d 40, 46-47, 9 USPQ 2d 1778 (2nd Cir. 1989). Once the challenger shows discontinued use, the owner must produce evidence of intent to resume use “within the reasonably foreseeable future.” *Silverman*, 870 F.2d at 46. See also, *Roulo*, 886 F.2d at 938.

⁷ *Star-Kist Foods, Inc. v. P.J. Rhoades & Co.*, 769 F.2d 1393, 227 USPQ 44 (9th Cir. 1985), *Seidemann Yachts, Inc. v. Pace Yacht Corp.*, 14 USPQ 2d 1497 (D. Md. 1989), *aff'd*, 13 USPQ 2d 2025 (4th Cir. 1990), compare *Colgate-Palmolive Co. v. Sanford Chemical Co.*, 162 USPQ 424 (TTAB 1969).

⁸ *Zelinski v. Columbia 300, Inc.*, 335 F.3d 633, 67 USPQ 2d 1446, 62 Fed. R. Evid. Serv. 665 (7th Cir. 2003).

⁹ *Clubman’s Club Corporation v. Martin*, 188 USPQ 455, 1975 WL 20849 (TTAB 1975), *Saratoga Vichy Spring Co., Inc. v. Lehman*, 625 F.2d 1037, 1044, 208 USPQ 175 (2d Cir. 1980), *Margaret Wendt Foundation Holdings, Inc. v. Roycroft Associates*, 84 USPQ 2d 1690, 2007 WL 3015224 (W.D.N.Y. 2007).

What is meant by the “reasonably foreseeable future” depends on the industry and the particular circumstances of the case. *Emergency One Inc.*, 56 USPQ 2d at 1348, *cf. Defiance Button Mach. Co. v. C & C Metal Prods. Corp.*, 759 F.2d 1053, 1060-61, 225 USPQ 797 (2d. Cir. 1985). In *Emergency One Inc.*, the Court held that because fire trucks have very long lives, the mark remains visible, and the good will value of the mark persists long after production of trucks with that mark has ceased. Likewise in *American Motors Corp. v. Action-Age, Inc.*, 178 USPQ 377 (TTAB 1973) (the auto model mark ‘Rambler’, which ceased production with the 1969 model year, was not abandoned four years later because “a considerable reservoir of goodwill in the mark ‘Rambler’ in this country that inures to [American Motors] as a consequence of the large number of ‘Rambler’ vehicles still on the road”).

The WARRIOR tires sold by Double Coin have a significant, useful life and WARRIOR tires remain on the road for at least a substantial time on the order of years leading Double Coin’s customers to be likely to seek replacement WARRIOR tires in the future. Further, Double Coin plans to resume use of the WARRIOR mark in the foreseeable future, Jin Declaration ¶¶ 14 and 15.

Summary judgment on Double Coin’s Petition (Dkt. #1) in favor of Double Coin and dismissal of Tru Development’s counterclaim (Dkt. #6) is appropriate as Tru Development has presented no genuine issues of material fact to be resolved at trial, and Double Coin is entitled to judgment as a matter of law and based on the facts of the case as set forth in full in the Yang Declaration and the Jin Declaration.

V. CONCLUSION

Wherefore, Petitioner Double Coin requests entry of summary judgment in its favor and against Registrant Tru Development on its Petition for Cancellation In The Matter Of Registration 4,805,521 on the sole Trademark Act § 2(d) claim (Paragraph 7, Dkt. #1), and dismissal of Tru Development's 15 U.S.C. § 1127 and TMEP § 901.02 counterclaim.

Respectfully submitted,

PETITIONER DOUBLE COIN HOLDINGS, LTD.

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EXHIBIT 1

Exhibit 1

FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER

The materials contained in this exhibit have been designated confidential in their entirety by Registrant, Tru Development, pursuant to a protective order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board and counsel for the parties, or by the order of a court.

CERTIFICATE OF ELECTRONIC TRANSMISSION

The undersigned hereby certifies that this Motion for Summary Judgment is being electronically transmitted to the Patent and Trademark Office on March 6, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and complete copy of this Motion for Summary Judgment to be served via First Class U.S. Mail upon the following this 6th day of March, 2017:

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