

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

Anvil Knitwear, Inc.,
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:
Opposer,
:
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v.
:
:
Success Ware Inc.,
:
:
Applicant.
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:

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Consolidated: Opposition No. 91155386
Opposition No. 91159232



NOTICE OF RELIANCE UNDER RULE 2.122(e)

U.S. Patent & Trademark Office Post Office #34

Success Ware Inc. (“Applicant”) hereby makes of record in connection with this opposition proceeding and submits before this Board the following documents from a Civil Litigation Action, case no. CV-06-8100 SVW (Ssx), Payne v. Anvil Knitwear, Inc., before the United States District Court, Central District Western Division, Los Angeles County in which Anvil Knitwear, Inc. (“Opposer”) by way of Counterclaim brought Success Ware Inc. as a Joinder Counter-Defendant in an Infringement Action and submits:

- Certified Copy of the Final Judgment of District Court Exhibit A
- Copy of the Civil Docket Sheet Exhibit B
- Copy of “Opposer’s” Declaration (Levesque w/o Exhibits) with respect anvil design mark in question, Registration No. 783,711. Exhibit C
- Copy of District Court’s Order Granting Summary Judgment Exhibit D

Success Ware Inc. (“Applicant”) additionally makes of record in connection with this opposition and submits:

- Copy of Opposer’s Motion dated August 22, 2008 requesting to Admit Testimony and Exhibits from a prior proceeding w/o exhibits Exhibit E

Applicant's Opposition Response dated August 31, 2008 to Opposer's request to admit Testimony and Exhibits from prior Consolidated Proceeding (Opposition No. 117,782 and Cancellation No. 30,393) before the Board. Exhibit E-1

Copy of this Board's Order of October 14, 2008 Denying Opposer use of Testimonial Deposition and Exhibits from a prior Consolidated Proceeding (Opposition No. 117,782 and Cancellation No. 30,393) before the Board. Exhibit E-2

Copy of some Exhibits from Testimonial Deposition from a prior consolidated proceeding (Opposition No. 117,782 & Cancellation No. 30,393) denied by this Board's in its Order of October 14, 2008 submitted into the record as evidence by opposer. Exhibit E-3

Copy of Applicant's Objection and Opposition Response against Opposer's use of Testimony Deposition and Exhibits from prior Consolidated Proceeding (Consolidated: Opposition No. 117,782 and Cancellation No. 30,393) dated March 28, 2009. Exhibit F

Copy of Board's Decision of June 22, 2004 from the prior consolidated proceeding (Opposition No. 117,782 & Cancellation No. 30,393) in which the Board threw out and did not consider opposers exhibits which displayed different anvil design marks not used to initiate the action and considered different from anvil design mark, Reg. No. 783,711. (Board's Decision at Footnote #17 at page 12) These are the same anvil design marks referenced at attached Exhibit E-3. Exhibit G

Copy of Applicant's Response to Opposer on Applicant's Request for Reconsideration dated September 21, 2008 to Board's July 25, 2008 Order/Decision. Exhibit H

Copy of Notice of Publication which was submitted by way of the prior Director of Patent and Trademarks, James E. Rogan, after finding no likelihood of confusion, granting Applicant's Petition against Examining Attorney's denial to further process Applicant's Application. Exhibit I

Applicant relies on the above documents and asserts the documents submitted are relevant with respect to this proceeding and the allegations in Opposer's complaint regarding opposer's mark in question, Registration No. 783,711. Opposer has presented and acknowledged by record before District Court that Registration No. 783,711 has been "Updated" and no longer in use and/or has discontinued

its use. Applicant relies upon documents (attached Exhibits A-D) as evidence under the Full Faith and Credit Statute, Title 28 U.S.C. 1738 and Constitution Article IV §1. Additionally, the documents (attached Exhibits E-I) are relevant to this opposition proceeding since this Board in its Order dated October 14, 2008 denied Opposer's request to submit Testimonial Deposition (Transcript and Exhibits) from a prior Consolidated Proceeding (Opposition No. 117,782 and Cancellation No. 30,393) before the Board. Opposer has disregarded this Board's Order of October 14, 2008 and submitted as evidence into the record before this Board exhibits from a prior consolidated proceeding (Opposition No. 117,782 and Cancellation No. 30,393) and basically the same Testimonial Deposition. Therefore, Applicant has object and opposed opposer submitting into evidence of record Exhibits from a prior Consolidated Proceeding at attached Exhibit F at pg. 3, ¶3.

Success Ware Inc. ("Applicant") further brings to this Board's attention to the relevancy of the documents with respect to Opposer's Exhibits, the exhibits display entirely different "anvil design" marks which were not used to initiate this proceeding and is definitely not the "anvil design" mark of the pleaded Registration of Opposer's Notice of Reliance submitted December 2, 2008. Thus, some of the same exhibits and exhibits which displayed the same anvil design marks the prior Board in the prior consolidated proceeding (Opposition No. 117,782 and Cancellation No. 30,393) threw out as unrelated to Reg. No. 783,711, opposer has submitted into the record as evidence of use.

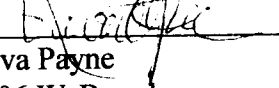
Applicant submitted a Reconsideration on Board's July 25, 2008 Order denying Success Ware Inc.'s ("Applicant's") Res Judicata with respect this proceeding before the Board initiated by Anvil Knitwear, Inc. ("Opposer"). The relevancy of Applicant's Reconsideration on Board's July 25, 2008 Order/Decision with respect to Opposer's disregard of Board's Order of October 14, 2008, if the Board accepts the Testimonial Deposition and Exhibits from the prior consolidated proceeding than Res Judicata exist. (see attached Exhibit H) This is can be substantiated by Opposer's own words as noted in

Opposer's Motion dated August 22, 2008. The relevancy of the Notice of Publication filed January 23, 2003 after Applicant's Petition by granted by prior Director of Patent and Trademarks, Jame E. Rogan, finding no likelihood of confusion between Applicant's mark in question in this proceeding. (see attached Exhibit I)

Thus, Applicant relies on the documents to show as evidence that Opposer has discontinued use of the mark in question, Registration No. 783,711 and/or has abandoned the mark through material alteration which must be considered no longer in use. Due to this Board granting Applicant's Motion To Extend Testimony Period dated May 13, 2009 (attached Exhibit J) after both parties Testimony Period ended, this Notice of Reliance replaces the prior submitted Notice of Reliance of Applicant dated February 18, 2009.

Dated: Louisville, KY
July 20, 2009


SUCCESSWARE INC.,

By: 
Reva Payne
4506 W. Broadway
Louisville, KY 40211

CERTIFICATE OF SERVICE

The undersign hereby certifies that on July 20, 2009, a true and correct copy of the foregoing, Applicant's NOTICE OF RELIANCE, was served "Express Mail" to the Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 and "First Class" mail postage prepaid to Anvil Knitwear, Inc.'s Counsel at the following address:

James D. Weinberger
FROSS ZELNICK LEHRMANT & ZISSU, P.C.
At First Avenue and 48th Street
New York, NY 10017


Reva Payne

Applicant's Notice of Reliance
EXHIBIT A
7/20/09

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