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

Proceeding	91209272
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

<p>Micys Company S.p.A.</p> <p style="text-align:center">Opposer,</p> <p style="text-align:center">v.</p> <p>Raphael Lauria</p> <p style="text-align:center">Applicant.</p>	<p>Opposition No. 91209272</p> <p>Mark(s): MISSPUPA</p> <p>Serial No. 85696589</p> <p>Published: 01/15/2013</p>
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**APPLICANT'S OPPOSITION TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT**




Applicant Raphael Lauria ("Applicant"), by and through it's undersigned counsel, submits its Opposition to Opposer Micys Company S.p.A.'s ("Opposer" or "Micys") Motion for Summary Judgment.

I. INTRODUCTION

In its Motion for Summary Judgment, Micys asserts priority of use and a likelihood of confusion between Applicant's mark and Opposer's marks. Micys' Motion must be denied for the following reasons:



First, Micys has misapplied the legal standard for summary judgment in trademark proceedings. Summary judgment is only proper in the absence of any genuine issue of material fact. In the instant matter, we will show that several genuine issues of material

fact exist. Further, since all factual assertions must be viewed in the light most favorable to the non-moving party, Micys cannot prevail in a request for summary judgment.

Second, the  mark in question poses no likelihood of confusion amongst the consuming public. Micys claims a likelihood of confusion between its Pupa marks and Applicant's  mark is "undisputable." However, after a careful analysis of each of the Du Pont factors referenced by Micys, it is clear that no likelihood of confusion exists and that Applicant has a legitimate intent in using its  mark in commerce for the goods and services listed in its Application.

For these and other reasons discussed in more detail *infra*, Applicant respectfully requests that Micys' Motion for Summary Judgment, be denied.

II. STATEMENT OF FACTS

On or about August 6, 2012, Applicant filed with the U.S. Patent and Trademark Office an intent-to-use application to register  (design) for clothing, namely, tops, bottoms, combinations, shoes, belts, hats, gloves, shirts, pants, shorts, skirts, underwear, coats, jackets, sweaters, sweatshirts, scarves, socks, stockings in international class 025. *See* Declaration of Raphael Lauria("Lauria Decl."), Exhibit 1 (Applicant Declaration), ¶ 3; *See* Exhibit 2 (TSDR records for  (Serial No. 85696589)). The application did not include a request to register the mark for Travel bags, make-up bags sold empty, vanity cases sold empty, umbrellas, overnight bags, suitcases, handbags, pocket wallets, purses, cases, namely, leather cases, imitation leather cases, key cases, backpacks, belt bags in international class 018 nor Soaps; deodorants for personal use;

perfumery; essential oils, cosmetics, hair lotions, dentifrices; Make-up products, namely, eye, face and body glitter, mascara, creamy eye shadow, eye shadow compact, eye shadow power, blusher, compact powder, loose powder, bronzing powder, lipstick, lip gloss, lip pencils, pencils for making up eyes and eye lashes, foundation, cream foundation, cream-powder foundation, kajal eye pencil, concealer stick, colored cream for the face and body, eye liner; perfumes, namely, eau de toilette, eau de parfum, eau de cologne; nail polish, nail enamel, nail polish remover, kits containing make-up products, namely, lipstick, lip pencil, eye shadow, eye pencil, nail polish, nail polish remover, foundation cream, blusher and eau de toilette in international class 003.

Applicant intends to use its mark for Clothing, namely, tops, bottoms, combinations, shoes, belts, hats, gloves, shirts, pants, shorts, skirts, underwear, coats, jackets, sweaters, sweatshirts, scarves, socks, stockings, *See Exhibit 1 (Applicant Declaration)*, ¶ 3.

Applicant's goods will be sold in a variety of boutique clothing, department, and online stores.

Opposer owns Registration No. 3431506 for PUPA, which was filed on a Section 66(a) basis, *See Exhibit 3 (TSDR records)*. However, although Opposer's registration includes international class 025 for clothing, Opposer's website clearly demonstrates that Opposer does not offer any clothing items in commerce in the United States or elsewhere, *See Exhibit 4 (website)*. It should also be noted that none of Opposer's specimens, provided to the USPTO, include a sampling of Opposer offering clothing in commerce in the United States or elsewhere. Opposer contends that the goods identified in Applicant's Application for clothing are related or substantially the same, but Opposer has provided no evidence outside of a declaration signed by Micys' President of the Board of Directors, Angelo Gatti,

Exhibit 5 (Opposer Declaration), ¶ 5, in support of its assertion. Applicant contends that Opposer is not in the clothing industry and is only asserting that it may enter the clothing industry as admitted in Opposer's Declaration of Angelo Gatti, where Opposer states "Given Micys' roots in the fashion and design industry, its product expansion, and its plans to continue expansion of the PUPA brand, including offering clothing in the United States", *id* ¶ 7.

Asides from the fact that Opposer does not use its marks in association with clothing (and likely has not intent to in light of the fact that there is no evidence of them intending to sell goods), the marks themselves have distinguishing features. Applicant's mark contains the additional letters MI followed by a stylized image of a heart. Consumers viewing Applicant and Opposer's marks will not associate the two with each other. Applicant's mark is clearly different in look, sound, connotation, and commercial impression. Further, the degree of care and sophistication likely to be exercised by consumers will negate any claim of confusion. Because of this and actual disputes over material facts, summary judgment is improper and Opposer's Motion must be denied.

III. LEGAL ARGUMENT

A. The Summary Judgment Standard

The Trademark Trial and Appeal Board ("TTAB") follows the same standards for summary judgment as the federal courts. See *Spraying Systems Co. v. Delavin, Inc.*, 975 F.2d 387, 392 (7th Cir. 1992). "[T]he party moving for summary judgment, bears the initial burden of demonstrating the absence of any genuine issue of material fact and that it is entitled to judgment as a matter of law." See *Hornblower & Weeks, Inc. v. Hornblower & Weeks, Inc.*, 60 USPQ2d 1733, 1735 (TTAB 2001). "If Opposer meets this burden, then

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