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

Proceeding	91244316
Party	Plaintiff Audemars Piquet Holding S.A.
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Submission	Motion for Summary Judgment Yes , the Filer previously made its initial disclosures pursuant to Trademark Rule 2.120(a); OR the motion for summary judgment is based on claim or issue preclusion, or lack of jurisdiction. The deadline for pretrial disclosures for the first testimony period as originally set or reset: 03/05/2020
Filer's Name	John A. Galbreath
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Date	09/30/2019
Attachments	91244316-Summary Judgment Motion and Motion to Amend Pleading.pdf(197615 bytes) 91244316-Amended Notice of Opposition.pdf(158913 bytes) Galbreath Declaration.pdf(203505 bytes) Exhibit 1-TSDR Entry.pdf(308885 bytes) Exhibit 2-First TEAS Printout.pdf(250324 bytes) Exhibit 3-Second TEAS Printout.pdf(301946 bytes) Exhibit 4-Application As Filed.pdf(365647 bytes) Exhibit 5-First Interrogatories to Applicant.pdf(398619 bytes) Exhibit 6-Applicant Responses to First Interrogatories.pdf(846814 bytes) Exhibit 7-Second Interrogatories to Applicant.pdf(168355 bytes) Exhibit 8-First Requests for Admission to Applicant.pdf(431174 bytes) Exhibit 9-Applicant Response to First Requests for Admission.pdf(594263 bytes) REDACTED-Exhibit 10-Applicant Responses to Second Interrogatories.pdf(252136 bytes) Exhibit 11-Applicant Supplemented Responses to First Interrogatories.pdf(567350 bytes) Exhibit 12-TESS Record List Display.pdf(1123682 bytes) REDACTED-Exhibit 13-Applicant Supplemented Responses to Requests for Admission.pdf(225499 bytes)

Audemars Piguet Holding S.A.)	IN THE UNITED STATES
)	PATENT AND TRADEMARK OFFICE
Plaintiff/Opposer)	
)	TRADEMARK TRIAL AND APPEAL BOARD
v.)	
)	
Tenengroup Ltd)	APPL. NO. 87/888,209
)	
Defendant/Applicant)	OPPOSITION NO. 91244316
_____)		

**OPPOSER'S MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION,
MOTION FOR SUMMARY JUDGMENT, AND MOTION TO SUSPEND
PROCEEDINGS PENDING THE DISPOSITION OF OPPOSER'S MOTION FOR
SUMMARY JUDGMENT; AND MEMORANDUM IN SUPPORT OF OPPOSER'S
MOTION FOR LEAVE TO AMEND, MOTION FOR SUMMARY JUDGMENT,
AND MOTION TO SUSPEND THE OPPOSITION PROCEEDING**

Pursuant to Federal Rules of Civil Procedure ("FRCP") 15(a), C.F.R. §2.107(a) and T.B.M.P. § 507, Audemars Piguet Holding S.A. ("Audemars Piguet", "Opposer", or "Plaintiff") hereby moves the Trademark Trial and Appeal Board (the "Board") for leave to amend its Notice of Opposition under FRCP 15(a) to add a cause of action for fraud. The First Amended Notice of Opposition is necessary to add a cause of action for fraud, which has recently been revealed in Tenengroup Ltd's ("Tenengroup", "Defendant", or "Applicant") responses to Opposer's First Set of Requests for Admission Nos. 1-39, ("Opposer's Requests for Admissions"), Opposer's First Set of Interrogatories Nos. 1-36 ("Opposer's First Interrogatories") and Opposer's Second Set of Interrogatories Nos. 37-38 ("Opposer's Second Interrogatories") (collectively "Opposer's Discovery Requests").

Moreover, Opposer moves the Board for summary judgment under FRCP 56(c), granting its opposition to U.S. Trademark Application No. 87/888,209.

Furthermore, Opposer hereby requests that the Board suspend the proceeding pending a decision on its motions.

Opposer's Motions are supported by the Declaration of John A. Galbreath ("Galbreath Decl.") and the associated Exhibits attached hereto. Additionally, a First Amended Notice of Opposition is being submitted concurrently herewith.

**MEMORANDUM IN SUPPORT OF OPPOSER'S
MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION**

The application at issue in this proceeding, U.S. Trademark Application Serial No. 87/888,209, filed on April 23, 2018 ("Applicant's Application") for the mark OAK & LUNA ("Applicant's Mark") identifies the following goods and services: in Class 14, jewels; clocks; chokers; jewelry chains; bracelets; rings; jewelry watches; pins, namely, cloisonne pins, jewelry pins for use on hats, lapel pins jewelry, ornamental lapel pins, ornamental pins, ornamental pins made of precious metal, pins being jewelry, tie pins, tie-pins of precious metal; pearls; necklaces; imitation pearls; semi-precious stones; rough precious stones; synthetic precious stones; spinel; jewelry, precious stones; earrings; ear clips; ankle bracelets; bracelets of precious metal; gold; gold jewelry; gold watches; gold alloy ingots; silver watches; silver jewelry; silver alloys; and in Class 35, on-line retail store services featuring jewels and clocks and clothing, namely, shirts, dresses, skirts, blouses, pants, suits beachwear, swimwear, underwear, sportswear. Applicant's sole basis for registration, for both the goods and services, is Applicant's actual use of the mark in U.S. commerce under Section 1(a) of the Trademark Act.

On April 19, 2019, Opposer received Applicant's Responses to Opposer's First Interrogatories Nos. 1-36, and on June 24, 2019, Applicant supplemented those responses. On June 13, 2019, Opposer received Applicant's Responses to Opposer's First Requests for Admission, and on June 14, 2019, Opposer received Applicant's Responses to Opposer's Second Interrogatories Nos. 37-38 (collectively "Applicant's Responses to Opposer's Discovery Requests").

As discussed in more detail below, in Applicant's Responses to Opposer's Discovery Requests, Applicant admits that, at the time of filing its application, Applicant had not used the mark OAK & LUNA in U.S. commerce for many of the goods/services identified in the application – despite the fact that the sole filing basis for Applicant's Application was Section 1(a) of the Trademark Act. In fact, in Applicant's Responses to Opposer's Discovery Requests, Applicant also admits that it is not currently using, and has never used, its mark in U.S. commerce for many of the goods/services listed in its application.

These are material misrepresentations of fact that Applicant knew or should have known were false or misleading. Since the sole basis for the goods and services in Applicant's Application is Applicant's actual use of its mark in U.S. commerce under Section 1(a) of the Trademark Act, Applicant has committed fraud on the U.S. Patent and Trademark Office ("USPTO"). As a result of this fraud, Applicant's Application is *void ab initio*.

As the facts concerning Applicant's fraud in filing and prosecuting Applicant's Application came to light in Applicant's Responses to Opposer's Discovery Requests, Opposer seeks leave to amend its Notice of Opposition to add a cause of action for fraud. Please note that this proceeding was suspended from May 24, 2019 until just recently due to

a pending Motion to Compel, and Opposer could not seek leave to amend its Notice of Opposition while the suspension was in effect.

OPPOSER'S MOTION TO AMEND SHOULD BE GRANTED

T.B.M.P. Section § 507.02 and FRCP 15(a) state that once an answer has been filed, a party may amend its pleading by leave of the Board and that leave must be freely given when justice so requires as long as it does not unduly prejudice the adverse party. Moreover, the Board has held that amendments to pleadings should "be allowed with great liberality" *Commodore Elec. Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503, 1505 (T.T.A.B. 1993).

As this proceeding is still in its early stages, Applicant will not be prejudiced by Opposer's filing of its First Amended Notice of Opposition. Moreover, there has been no undue delay, because Opposer received the relevant responses to its discovery requests in mid-June 2019, and could not seek leave to amend its Notice of Opposition while the case was suspended from May 24, 2019 until just recently. Further, all evidence relevant to the fraud claim that may benefit Applicant is already in Applicant's possession and control. In light of the foregoing, justice requires the Board to grant leave to Opposer to amend its Notice of Opposition to plead this cause of action.

For the above reasons, Opposer respectfully requests leave to amend its Notice of Opposition to properly reflect the charge of fraud based on this evidence obtained during discovery. *See Turbo Sportswear, Inc. v. Marmot Mountain Ltd.*, 77 U.S.P.Q.2d 1152 (T.T.A.B. 2005) ("*Turbo*") (the Board granted a Motion to Amend where a claim of fraud

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