

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 88324422
Applicant: Australian Gold, LLC
Filing Date: March 4, 2019
Law Office: 104
Examiner: Dominic Fathy
Attorney Docket No.: 8406-661
Mark: VERSUS

DECLARATION OF MATT COTTON

I, Matt Cotton, declare as follows:

1. I am the Chief Executive Officer for Australian Gold, LLC. I have substantial experience and knowledge regarding the marketing and sales of products in the tanning industry and particularly in the indoor tanning industry.
2. Australian Gold has in the past and continues to market indoor sun tanning preparations and other products. Australian Gold's products are often marketed as premium products made from premium ingredients and are of the highest quality.
3. While usable outdoors, many of Australian Gold's premium tanning preparations are distributed and marketed in the United States primarily for sale in indoor tanning salons.
4. The type of product the VERSUS mark is intended to be used on will be distributed and marketed for sale in indoor tanning salons.
5. Indoor tanning preparations are primarily designed for and used with indoor tanning equipment, i.e., an ultraviolet tanning bed or booth, where a user is seeking artificial ultraviolet exposure. Indoor tanning preparations do not contain a sun protection factor ("SPF") and do not protect persons from ultraviolet rays.

6. In contrast, “sunscreen” products typically refer to variations of: “sunblocks,” “sunscreens,” and “cosmetic preparations against sunburn,” which products are sold as sun protection products for use in the outdoor market. Suntan products have an “SPF” rating to rate their efficiency at blocking ultraviolet rays. Suntan/sunblock products are legally and statutorily categorized by the FDA as “drugs” which have substantially different regulatory requirements than indoor tanning preparations which are categorized as “cosmetics.”

7. Indoor tanning salons typically include one or more ultraviolet tanning beds or booths as the focus of their offered tanning services. Such salons typically sell complimentary products for use before, during or after tanning, such as indoor tanning preparations.

8. Such salons offer trained tanning consultants who assist consumers in selecting an appropriate product.

9. Consumers pursuing a tan at a professionally run indoor tanning salon are knowledgeable and will be purchasing the products in a specific environment with the input and guidance of a trained tanning consultant. These sophisticated consumers take care in purchasing one or more tanning sessions and correspondingly take care in purchasing indoor tanning products offered for sale and used during those sessions from trained tanning consultants in such salons.

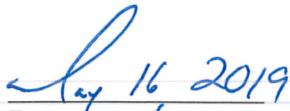
10. Indoor tanning salons typically do not sell night and day creams or soaps for face and body care as those terms are normally understood by consumers.

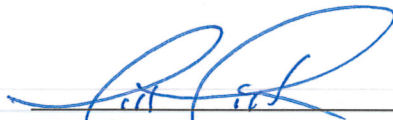
11. Indoor tanning salons are not a normal channel of trade for night and day creams or soaps for face and body care.

12. Australian Gold requires each of its distributors to agree to sell its indoor tanning lotion to a “person or entity (a) whose primary business activity is operating a tanning salon or hair and beauty care salon; and (b) who offers approved indoor tanning and instruction on the use of

Products as an on-premises service; and (c) who obtains training and instruction on matters related to the use of the Products from the Company or one of the Company's distributors.” The terms of the distributorship agreement prohibit sales of indoor tanning lotions to “any individual or entity, including any tanning salon, who sells the Products on the internet in any manner whatsoever including but not limited to e-Bay, Froogle, Yahoo, Amazon or any other domain name or website which offers the Products for sale, or (e) any drug stores, grocery stores or other retail, wholesale or discount stores or outlets, flea markets, shopping malls, etc.”

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares under penalty of perjury that the foregoing is true and correct to the best of my knowledge.


Date


Matt Cotton