



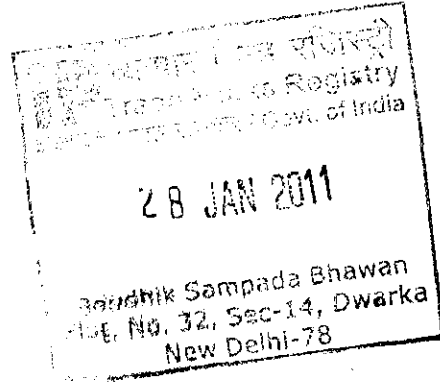
SAIKRISHNA & ASSOCIATES  
ADVOCATES

Our Ref: IT00676

January 28, 2011

The Registrar of Trade Marks,  
The Trade Marks Registry,  
New Delhi.

Re: Under Armour, Inc.  
Trade Mark Application No.: 1788950  
Trade Mark: UNDER ARMOUR  
Class : 18, 25 and 28  
Filed on : 24<sup>th</sup> February, 2009



Dear Sir,

This is with reference to the examination report No. **TMR/MUMBAI/EXM/2010/** dated 28<sup>th</sup> June 2010.

Our reply to the objections raised in the official letter is as follows:

The applicant's mark "**UNDER ARMOUR**" is a composite word comprising of the two words "**UNDER**" and "**ARMOUR**" which is very much inherently distinctive as far as the goods which are sold under the mark are concerned. The subject mark is such that it *remains fixed in the mind of the public so as to enable them to recognize the mark and goods of the applicant from those of others.* This would easily distinguish the applicant's mark from the cited marks. It was held in **Griffith v Vick Chemical AIR 1959 CAL 654 at 659**, that "the true test is what is the totality of the impression that the mark produces". Therefore the totality of the impression formed by the mark in the minds of the relevant public is adaptive of distinguishing the goods from the mark itself.

To meet the objection of paragraph 1, it is reiterated that the marks should be read as a whole and not simply dissected for raising any objection. The appreciation of the visual, aural or conceptual similarity of the marks in question must be based on the overall impression given by the marks when read or perceived as a whole and not concentrating on particular components. It is pointed out here that the cited marks comprise of the single word "**UNDER**" coupled with word such as "**COLOURS OF BENETTON**", "**WOOD**" or the word "**ARMOUR**" either represented as a single word or label/device or coupled with words like "**BHH**", "**JEANS**", "**TOMMY**" either represented in a different form or as a standard character. Comparatively, the applicant uses the word "**UNDER**" in conjunction with "**ARMOUR**" which makes the mark a distinct

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representation as a whole. It is to be noted that no cited mark contains both the words i.e “UNDER” and “ARMOUR” as in the applicant’s mark “UNDER ARMOUR” which again confirms the distinction. As far as the cited mark under application no. 1317481 is concerned, it is owned by the applicant itself, therefore there is no conflict of interest.

It was observed in *Cadila Health Care Limited v. Cadila Pharmaceuticals Limited JT 2001 (4) SC 243* wherein the Supreme Court has considered the question about deceptive similarity in the matter it has been held that the marks must be compared as a whole. It is not acceptable to dissect the mark and extract a portion of the word and determine the difference based on the extracted portion. The true test is whether the totality of the proposed trade mark is such that it is likely to cause deception or confusion or mistake in the minds of persons accustomed to the existing trade mark. In the light of the above arguments, the distinction of the applicant’s mark in comparison to the cited mark is conspicuous and hence there is no scope of public confusion as to the source.

The demonstration of the distinction of the applicant’s mark and the absence of public confusion can be reiterated by the following facts:-

1. The Applicant is a well known name with athletes around the world. Applicant was started by Mr. Kevin Plank a football player himself at the University of Maryland, USA. Soon Applicant’s branded goods went on to becoming indispensable for the athletes of today. Applicant’s most well-known apparel products incorporate technology in the finest microfiber fabrics to create the ultimate Moisture Transport System in garments that slide the body like a second skin to keep one cool, dry, and light throughout the course of a game or workout.
2. In 1997 the Applicant came out with several new apparel lines, each one designed with specific needs in mind. By the end of 1997 over 7,500 of the applicant’s products had been sold. By the year 1998 the applicant signed on as the official performance apparel supplier for the NFL’s European teams and moved into a new 5,000-square-foot facility during the summer. Soon after, applicant provided its UNDER ARMOUR branded clothing to Warner Bros. which was filming a new football movie Warner Bros called “Any Given Sunday”. Within a period of 3 years, the applicant sold about 2,500,000 garments to customers like **Major League Baseball (MLB) teams, almost two dozen NFL teams, four National Hockey League (NHL) teams, dozens of NCAA teams, and both sponsored and outfitted the U.S. archery team at the 2000 Summer Olympic Games in Sydney, Australia.** In 2000, the Applicant also outfitted the new XFL Football League which gained considerable attention during the league’s debut on national television. Though the XFL later folded,

the exposure helped put the applicant's gear into 1,500 retail outlets throughout the United States. To keep up with demand, the applicant relocated to a new 14,000-square-foot site in October and by early the next year had become the official outfitter of MLB, the NHL, and USA Baseball. The applicant had also become the official outfitter of Major League Soccer and the U.S. Ski Team and also provides clothing to law enforcement and military personnel.

3. Today the applicant has sponsorship agreements with individual athletes such as *Milwaukee Bucks* rookie *Brandon Jennings*, U.S. professional skier and Olympic Gold medalist winner *Lindsey Vonn*, professional football Stars such as *Brandon Jacobs*, *Devin Hester*, *Patrick Wills* and *Vernon Davis* as well as various other well know U.S volleyball and baseball players.
  
4. Today the products of the applicant are available over **20,000 retail stores** worldwide. They have licensing agreements to be official suppliers of performance apparels and footwear to a variety of sports teams and leagues at the collegiate and professional level as well as Olympic Teams. The Applicant's marketing strategy has been to create a link in the consumer market between their products and the professional and collegiate athletes, which they have gained significantly through brand name recognition from mentioned sponsorship teams and athletes. Net revenues increased from \$131.2 million or 18.1% to \$856.4 million for the year ended 31<sup>st</sup> December 2009 from \$725.2 million for the same period in 2008. Also, there has been a considerate increase of \$51.4 million in footwear sales driven primarily for running footwear launch in the first quarter of 2009. There was also an increase in marketing cost \$11.2 million to \$106.1 million for the year ended December 31<sup>st</sup>, 2009 from \$94.9 million for the same period in years 2008 due to the association with well known names and professional teams.
  
5. The applicant is also featured in variety of publications such as *Cosmopolitan* and *Seventeen* which are also available in India and other well know magazines such as *Women's Health*, *ESPN The Magazine*, *Runner's World*, *Glamour* and the like.
  
6. The Applicant earned accolades from several sources in late 2001, including being named **Apparel Supplier of the Year from Sporting Goods Business**, and a **Victor Award for the best New Product Launch from the Sports Authority**, the largest sporting goods chain in the USA.

Plank, too, was lauded for his achievements, as one of **Business Week's top "under thirty" business professionals**. The other feathers in the applicant's cap include:-

**Interactive Advertising Official Honouree (2007)**

*11th Annual Webby Awards in the category of "Other Advertising: Email Marketing"*

Under Armour is awarded bases upon excellence in the interactive advertising category for 2007

**Smart CEO Magazine's Top 10 CFO (2007)**

Wayne was recognized as one of Baltimore and Washington's Top 10 CFO's by Smart CEO magazine.

**Ernst & Young Entrepreneur Of The Year (2006)**

*Ernst & Young*

Kevin Plank awarded this honour in the Retail and Consumer Products Category for the year of 2006.

**Silver ADDY Award for Sales Promotion (2006)**

The Advertising Association of Baltimore's local ADDY award.

**Gold ADDY Award for Consumer Promotion (2006)**

The Advertising Association of Baltimore's local ADDY award.

**PROTECT THIS HOUSE™ (2005)**

*The American Marketing Association*

Baltimore's chapter of the AMA awarded Under Armour its top accolade – campaign of the year – for 2005.

**Industrialist Of The Year (2005)**

*The Baltimore Museum of Industry*

Kevin Plank is the Baltimore Museum of Industry's Industrialist Of The Year for 2005.

**Marketing & Creative Top Spot (2005)**

*The American Business Association - 2005*

Steve Battista and Marcus Stephens have been named Best Marketer and Best Creative at this year's Stevie Awards.

**Supplier of the Year (2002)**

*The Sports Authority "Supplier of the Year" for 2002*

One of this nationwide retailer's top honours, awarded to its number-one sporting goods supplier.

**CEO of the Year (2002)**

*"CEO of the Year" 2002 by Baltimore Smart CEO Magazine*

Kevin Plank was first selected for his role in changing the entire apparel industry and for exponential profit growth during a tough economic climate.

### **25 Leaders To Watch in The Sports Industry (2004)**

Among the "25 Leaders to Watch in the Sports Industry"  
by the Sporting Goods Manufacturers Association

### **Victor Award (2001)**

*Best New Product Launch of the Year from The Sports Authority*

### **Sporting Goods Business' Apparel Supplier of the Year**

*Sporting Goods Business*

For an unprecedented fourth consecutive year, Under Armour has been named SGB's Apparel Supplier of the year

### **Small Business Under 30 (2001)**

*Business Week's "Small Business Under 30" Award*

Presented to the top business leaders nationwide under the age of 30

### **Baltimore Business Journal's 40 Under 40**

*Baltimore Business Journal's "40 Under 40" Award was presented to Kevin Plank in 2005, 2006 and 2007. In 2007, Kevin was inducted into their Hall of Fame.*

### **Rookie Supplier of the Year**

*Modell's Sporting Goods "Rookie Supplier of the Year"*

Awarded to this premiere sporting goods retailers' top supplier each year.

7. Today the Applicant's goods have become a favorite among athletes of all ages.
8. Under Armour also featured its first advertisement for the Super Bowl which is the championship game of the NFL and the highest level of professional American Football in US. It is a game where two league champion teams play in an AFL-NFL world championship game. The day, it is played it is known as "Super Bowl Sunday". The advertisement was aired on 3<sup>rd</sup> Feb 2008 during Super Bowl XLII (42). It was a 60 sec spot estimated to cost more than \$5 million i.e approx. one – third of Applicant's annual media budget, featuring former NFL player Eric Ogbogu. This Ad launched "PROTOTYPE"- a new line of cross training shoes.
9. The TTAB (Trade Mark Trial and Appellate Board) of the United States Patent and Trademark Office in Under Armour Inc. v Renee Bode, under opposition number 91178653 also determined that the "UNDER ARMOUR" mark is a "famous mark".

10. the applicant owns the following registrations in various jurisdictions:

S. No.	Mark	Country	Registration No.	Class	Status
1.	Under Armour	Andorra	27991	18,25,28	Registered
2.	Under Armour	Argentina	2167587	18	Registered
3.	Under Armour	Argentina	2252910	25	Registered
4.	Under Armour	Australia	1083078	09,18	Registered
5.	Under Armour	Australia	927795	25	Registered
6.	Under Armour	Chile	797090	18,25	Registered
7.	Under Armour	China	4974747	09	Registered
8.	Under Armour	China	4974746	18	Registered
9.	Under Armour and UA logo	China	3479748	25	Registered
10.	Under Armour	China	3463214	25	Registered
11.	Under Armour	Coloumbia	280119	25	Registered
12.	Under Armour	Costa Rica	176133	25	Registered
13.	Under Armour	Dominician Republic	160213	18,25	Registered
14.	Under Armour	El Slavador	25	64 Book 99	Registered
15.	Under Armour	European Community	09,14,18	004703799	Registered
16.	Under Armour	European Community	25	002852721	Registered
17.	Under Armour	European Community	25,28,35	6474051	Registered
18.	Under Armour	Germany	25	3025 4 490.9	Registered
19.	Under Armour	Haiti	25	210 Reg. 141	Registered
20.	Under Armour	Honduras	25	94.048	Registered

21.	Under Armour	Hong Kong	09,18	300517301	Registered
22.	Under Armour	Hong Kong	25,28	301488664	Registered
23.	Under Armour	Iceland	18,25,28	89/2010	Registered
24.	UA Under Armour LOGO	India	25	1317481	Registered
25.	Under Armour	Japan	09,14,18	5001410	Registered
26.	Under Armour	Japan	25	4618194	Registered
27.	Under Armour	Japan	28	5119210	Registered
28.	Under Armour	Korea , Republic of	18	728534	Registered
29.	Under Armour	Liechtenstein	18,25,28	15560	Registered
30.	Macau	Under Armour	18	n/47364	Registered
31.	Macau	Under Armour	25	n/47365	Registered
32.	Macau	Under Armour	28	n/47366	Registered
33.	Mexico	Under Armour	18	1141117	Registered
34.	Mexico	Under Armour	25	966392	Registered
35.	Mexico	Under Armour	28	1186031	Registered
36.	New Zealand	Under Armour	09,18	737911	Registered
37.	New Zealand	Under Armour	25	665095	Registered
38.	Nicaragua	Under Armour	18,25	0703041 LM	Registered
39.	Norway	UA Under Armour UA Woman	25	251390	Registered
40.	Norway	Under Armour	18,25,35	249647	Registered
41.	Panama	Under Armour	18	146175-01	Registered

42.	Panama	Under Armour	25	146188-01	Registered
43.	Peru	Under Armour	25	00096495	Registered
44.	Phillipines	Under Armour	25	4-2003-0000945	Registered
45.	Samoa	Under Armour	25	5612	Registered
46.	Serbia	Under Armour	18,25	56785	Registered
47.	Singapore	UA Under Armour LOGO	25	T01018601	Registered
48.	Singapore	UA Under Armour LOGO	25	T04/16808C	Registered
49.	Solomon Islands	Under Armour	18,25,28	Tm2636	Registered
50.	South Africa	Under Armour	25	1328712ND	Registered
51.	South Africa	Under Armour	25	2003/01964	Registered
52.	Switzerland	UA Under Armour UA Woman	25	585688	Registered
53.	Switzerland	Under Armour	09,25	541435	Registered
54.	Taiwan	Under Armour	25	01070777	Registered
55.	Thailand	Under Armour	25	Kor216141	Registered
56.	Trinidad and Tabago	Under Armour	18,25	38203	Registered
57.	Turkey	Under Armour	25	2003 29904	Registered
58.	United States	UA Under Armour LOGO	25	2,954,369	Registered
59.	United States	UA Under Armour # LOGO	25	3,138,451	Registered
60.	United States	UA Under Armour Factory House	35	3,474,912	Registered




61.	United States	UA Under Armour LOGO	09,18,21,24,25	3,081,173	Registered
62.	United States	UA Under Armour LOGO	18	2,991,124	Registered
63.	United States	UA Under Armour LOGO	25	2,509,632	Registered
64.	United States	UA Under Armour Performance	25	3,663,142	Registered
65.	United States	UA Under Armour UA/Girls	25	3,646,428	Registered
66.	United States	Under Armour	09	3,622,787	Registered
67.	United States	Under Armour	09	3,500,322	Registered
68.	United States	Under Armour	09,18,21,22,24,25	3,052,160	Registered
69.	United States	Under Armour	10	3,826,168	Registered
70.	United States	Under Armour	14	3,500,323	Registered
71.	United States	Under Armour	18	3,174,498	Registered
72.	United States	Under Armour	25	2,279,668	Registered
73.	United States	Under Armour	25	3,642,614	Registered
74.	United States	Under Armour	25	3,712,052	Registered
75.	United States	Under Armour	25	2,917,039	Registered
76.	United States	Under Armour	25	3,178,549	Registered
77.	United States	Under Armour	25,28	3,700,135	Registered
78.	United States	Under Armour	32	3,501,771	Registered
79.	United States	Under Armour	35	3,638,277	Registered
80.	United States	Under Armour	35	3,375,771	Registered

81.	United States	Under Armour	41	3,586,005	Registered
82.	United States	Under Armour All-American Lacrosse Classic	41	3,538,889	Registered
83.	United States	Under Armour Combines	41	3,835,958	Registered
84.	United States	Under Armour UA/Women LOGO	25	3,556,268	Registered
85.	Vietnam	Under Armour	25	53415	Registered

In consideration of the above facts, it is evident that the applicant's mark is a "well known" mark, therefore, possesses a distinctive character and is capable of distinguishing it from all the cited marks. In these circumstances the Learned Registrar is respectfully requested to waive the objections raised under sections 11 of the Trade Marks Act, 1999 and allow the application to proceed for registration and advertise the application as such or in the alternative, grant us hearing at your New Delhi office.

Yours Sincerely,



for Pushpam Jha

of Saikrishna & Associates

Attorneys for the Applicants