

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

FAUX EFFECTS INTERNATIONAL, INC.

Opposer,

Serial No.: 76/405,281

Trademark: AQUA FAUX

International Class: 002

vs.

T.J. RONAN PAINT,

Applicant.

10-31-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #78

**RESPONSE TO REQUEST FOR EXPLANATION  
OF RELATIONSHIP BETWEEN FAUX EFFECTS, INC. AND  
FAUX EFFECTS INTERNATIONAL, INC.**

MP

Opposer, Faux Effects International, Inc. ("FEI") responds to the Board's Request for an Explanation of the Relationship between Faux Effects, Inc. and Faux Effects International, Inc. and asserts as follows:

1. Faux Effects, Inc. and FEI are, in fact, the same corporation which underwent a corporate name change. These corporate names refer to one, single corporation.
2. FEI filed a Notice of Opposition to Serial Number 76/405,281 for AQUA FAUX (the "Mark") on September 11, 2003 in its own name "Faux Effects International, Inc." Prior to the filing of the Notice of Opposition, FEI requested and obtained an extension of time to file a notice of opposition to the Mark. In the request for extension of time, FEI was identified by its old corporate name "Faux Effects, Inc."
3. By way of an amendment to its Articles of Incorporation on August 23, 2002, FEI changed its name from "Faux Effects, Inc." to "Faux Effects International, Inc." See Exhibit "A," Amendment to Articles of Incorporation. However, at the time undersigned

counsel filed the Request for Extension on behalf of FEI, undersigned counsel was not aware that FEI had formally changed its name from "Faux Effects, Inc." to "Faux Effects International, Inc." Undersigned counsel became aware of this change after the Request for Extension was filed, but before the Notice of Opposition was filed.

4. Based on the foregoing, FEI was misidentified through mistake. Trademark Rule 2.102(b) provides, in relevant part:

Any opposition filed during an extension of time should be in the name of the person to whom the extension was granted, but an opposition may be accepted if the person in whose name the extension was requested was *misidentified through mistake* or if the opposition is filed in the name of a person in privity with the person who requested and was granted the extension of time. (Emphasis added).

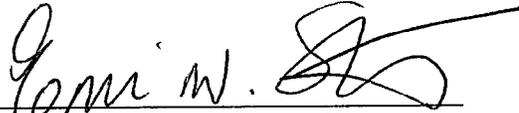
37 CFR 2.102(b). "Misidentified through mistake," means mistake in the form of the potential opposer's name or its entity type, not the naming of a different existing legal entity that is not in privity with the party that should have been named. *Cass Logistics Inc. v. McKesson Corp.*, 27 USPQ 2d 1075 (TTAB 1993); TMBP 206.03 (A request for ... an opposition, filed in a different name will not be rejected on the ground if it is shown to the satisfaction of the Board that the party in whose name the extension was requested was misidentified through mistake). FEI respectfully suggests that the opposition must go forward pursuant to Trademark Rule 2.102(b) because FEI was merely misidentified through mistake in the request for extension as "Faux Effects, Inc."

5. As previously stated, undersigned counsel became aware that FEI changed its name from "Faux Effects, Inc." to "Faux Effects International, Inc." after the Request for Extension was filed, but before the Notice of Opposition was filed. In fact, as soon as undersigned counsel became aware of the name change, name change notices were filed with the PTO for all of Opposer's registrations and pending applications.

6. Since "Faux Effects, Inc." and FEI are names referring to the same legal entity which was merely misidentified through mistake, FEI respectfully suggests there is no basis for precluding FEI from proceeding with the opposition filed.

**WHEREFORE**, Faux Effects respectfully requests that this opposition be sustained and that application Serial No 76/405,281 be refused registration.

Respectfully submitted,

By: 

Attorneys for Opposer, Faux Effects  
International, Inc.

James A. Gale/USPTO No.: 32,222

Henry S. Kaplan/USPTO No.: 25,346

Samuel A. Lewis/ FL Bar No.: 055360

Stephanie C. Alvarez/USPTO No.: 44,503

Erica W. Stump/FL Bar No.: 437632

Dated: October 31, 2003

FELDMAN GALE & WEBER, P.A.  
Miami Center, 19<sup>th</sup> Floor  
201 South Biscayne Boulevard  
Miami, Florida 33131  
Tel.: (305) 358-5001  
Fax: (305) 358-3309

AMENDMENT TO ARTICLES OF INCORPORATION

OF

FAUX EFFECTS INC.

FILED

03 FEB -3 AM 10:2

CLERK OF STATE  
TALLAHASSEE, FLOR.

The undersigned Directors of FAUX EFFECTS INC., hereby amend the Articles of Incorporation for said corporation, as follows:

AMENDMENT #1

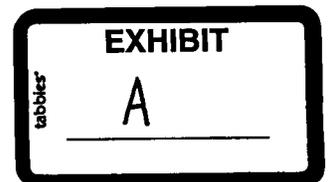
"The name of the corporation shall be: FAUX EFFECTS INTERNATIONAL, INC."

The above amendment was adopted at a meeting of all of the directors and all of the shareholders of the corporation on May 30, 2002. There is only one class of shareholders for this corporation, and the number of votes cast for the amendment by the class was sufficient for approval.

IN WITNESS WHEREOF, the undersigned has executed this Amendment to the Articles of Incorporation this 25 day of August, 2002.

  
RAYMOND SANDOR  
President and Treasurer

  
JANE KOEHLER  
Vice President and Secretary



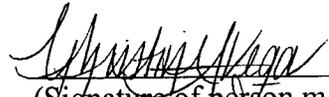
**CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8**

Date of Deposit: October 31, 2003

I HEREBY CERTIFY that the document named below is being deposited with the United States Postal Service, with sufficient pre-paid postage, in an envelope addressed to: Commissioner for Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA 22202-3514.

Name of Document: **Response to Request for an Explanation of Relationship between Faux Effects, Inc. and Faux Effects International, Inc.**

Christine A. Vega  
(Type or print name of person mailing  
paper)

  
(Signature of person mailing paper)

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TRANSMITTAL SHEET

Commissioner for Trademarks  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

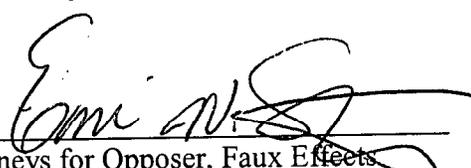


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Enclosed herewith is a **Response to Request for Explanation of Relationship between Faux Effects, Inc. and Faux Effects International, Inc.** Also enclosed is a return receipt card, which we request you stamp and return to the undersigned.

Respectfully submitted,

By: 

Attorneys for Opposer, Faux Effects International, Inc.

James A. Gale/USPTO No.: 32,222

Henry S. Kaplan/USPTO No.: 25,346

Samuel A. Lewis/ FL Bar No.: 055360

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