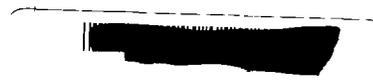


TTAB

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

| | | |
|-----------------------|---|------------------------|
| BIG O TIRES, INC. |) | |
| |) | |
| Opposer |) | |
| |) | |
| v. |) | Opposition No. 124,361 |
| |) | |
| GRABER PRODUCTS, INC. |) | Serial No. 75/867,832 |
| |) | |
| Applicant |) | |



12-05-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #11

CONSENTED MOTION TO REOPEN AND SET ASIDE DEFAULT JUDGMENT,
REVIVE APPLICATION AND AMEND IDENTIFICATION OF GOODS

Box: TTAB
ASSISTANT COMMISSIONER
FOR TRADEMARKS
2900 Crystal Drive
Arlington, VA 22202-3513

RECEIVED
OCT 12 11 11 AM '02

By notice dated October 21, 2002, the Trademark Trial and Appeal Board entered judgment by default against applicant, sustaining the opposition and refusing registration to Applicant. A copy of this notice is attached. The entry of default judgment resulted in the abandonment on October 21, 2002 of Application Serial No. 75/867,832.

Applicant, with the consent of the Opposer, moves that the Trademark Trial and Appeal Board reopen and set aside the default judgment entered in the above referenced Opposition. Applicant seeks such relief pursuant to TBMP §545, FRCP 60(b), asserting that the judgment of default was entered incorrectly and that the consequent abandonment was similarly incorrect.

Applicant never received the May 29, 2002 Notice of Default or the underlying Notice of Opposition. Upon finding out about the proceedings, Applicant contacted counsel for the Opposer and the parties executed a series of Stipulated Motions For Extensions of Time to Reply to the Order to Show Cause to allow time to negotiate. Copies are attached of the most recent Stipulated Motion For Extensions of Time to Reply to the Order to Show

Cause, until November 24, 2002. Also attached is the return postcard confirming receipt of the Stipulated Motion. The Trademark Trial and Appeal Board entered default judgment after receiving Applicant's most recent Stipulated Motion For Extensions of Time to Reply to the Order to Show Cause.

In summary, the parties to the Opposition were operating under stipulated extensions of time to allow the parties to continue their negotiations. Applicant wishes to emphasize that Opposer, through its attorney, Marsha Gentner stipulated to this Motion by telephone on November 21, 2002.

Accordingly, Applicant contends that it should be relieved from the entry of default judgment. Applicant respectfully asserts that good cause has been shown pursuant to TBMP §317.03 and TBMP §504.

As indicated above, Applicant has not received notices issued in this Opposition. Attached hereto is a Change of Address Notification filed in the United States Patent and Trademark Office on September 4, 2001 and a postcard confirming receipt thereof. Applicant wishes to confirm that correspondence be sent to:

Andrew S. McConnell
BOYLE FREDRICKSON NEWHOLM STEIN & GRATZ, S.C.
250 East Wisconsin Avenue, Suite 1030
Milwaukee, WI 53202
Telephone: (414) 225-9755
Facsimile: (414) 225-9753

Applicant respectfully requests that this motion be granted and that the judgment for default be set aside, the opposition proceedings be reopened, and that the underlying Application Serial No. 75/867,832 be revived.

Request To Amend Identification Of Goods

As part of the Settlement of Opposition No. 124,361, Applicant, Graber Products, Inc. agreed to amend the identification of goods in the underlying application.

Please amend the goods of Application Serial No. 75/867,832 as follows:

-- TRAILER HITCH MOUNTED VEHICLE RACKS FOR SPORTING EQUIPMENT OR LUGGAGE SOLD THROUGH BICYCLE SPECIALTY RETAILERS --.

This amendment accurately reflects applicant's goods and is believed to be in acceptable form.

Respectfully submitted,



Andrew S. McConnell, Reg. No. 32,272
Attorney for Applicant
Boyle, Fredrickson, Newholm,
Stein & Gratz, S.C.
250 E. Wisconsin Ave., Suite 1030
Milwaukee, Wisconsin 53202
Phone No.: (414) 225-9755

CERTIFICATE OF EXPRESS MAIL

I hereby certify that this correspondence is being deposited with the United States Postal Service as EXPRESS MAIL - POST OFFICE TO ADDRESSEE, in an envelope addressed to: Box TTAB, Assistant Commissioner For Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on December 5, 2002. The Express Label is EV034609263US.

Dawn M. Oleszak 12-5-02
Dawn M. Oleszak Date

CERTIFICATE OF SERVICE

I, Andrew S. McConnell, certify that a copy of the foregoing document has been served upon Opposer's attorney by mailing a copy of the same to:

Marsha G. Gentner
Jacobson Holman, PLLC
400 Seventh Street, N.W.
Washington, DC 20004

on December 5, 2002, by first class mail, postage prepaid.

Andrew S. McConnell
Andrew S. McConnell

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

MAILED
OCT 21 2002
PAT. & T.M. OFFICE

Opposition No. 124,361

Big O Tires, Inc.

v.

Graber Products, Inc.

On May 29, 2002, the Board sent a notice of default to applicant because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused. See Fed. R. Civ. P. 55, and Trademark Rule 2.106(a).

*By the Trademark Trial
and Appeal Board*

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

BIG O TIRES, INC.)
)
 Opposer)
)
 v.) Opposition No. 124,361
)
 GRABER PRODUCTS, INC.)
)
 Applicant)

STIPULATED MOTION FOR EXTENSION OF TIME
TO REPLY TO ORDER TO SHOW CAUSE

Box: TTAB
ASSISTANT COMMISSIONER
FOR TRADEMARKS
2900 Crystal Drive
Arlington, VA 22202-3513

Applicant Graber Products, Inc., applicant in the above-identified opposition, by and through its respective attorneys, hereby moves that the time to reply to the Order to Show Cause be extended from September 25, 2002 for an additional sixth (60) days to November 24, 2002.

Opposer, through its attorney, Marsha G. Gentner, stipulated to this motion by telephone on September 25, 2002.

Applicant respectfully requests that this motion be granted.

Respectfully submitted,



Andrew S. McConnell
Attorney for Applicant
Boyle, Fredrickson, Newholm, Stein & Gratz, S.C.
250 E. Wisconsin Ave., Suite 1030
Milwaukee, Wisconsin 53202
Phone No.: (414) 225-9755

CERTIFICATE OF EXPRESS MAIL

I hereby certify that this correspondence is being deposited with the United States Postal Service as EXPRESS MAIL - POST OFFICE TO ADDRESSEE, in an envelope addressed to: Assistant Commissioner For Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on September 25, 2002. The Express Label is EV034624950US.

Dawn M. Oleszak 9-25-02
Dawn M. Oleszak Date

EV034624950US

CERTIFICATE OF SERVICE

I, Andrew S. McConnell, certify that a copy of the foregoing document has been served upon Opposer's attorney by mailing a copy of the same to:

Marsha G. Gentner, Esq.
Jacobson Holman PLLC
400 Seventh Street, N.W.
Washington, DC 20004

on September 25, 2002, by first class mail, postage prepaid.

Andrew S. McConnell

The U.S. Patent and Trademark Office stamp placed hereon indicates receipt of:

Opposition No. 124,361
Big O Tires, Inc. v. Graber Products, Inc.

Included are:

Stipulated Motion For Extension Of Time To Reply To Order To Show Cause
Return Postcard

Via Express Mail - Label No. EV034624950US

Date: September 25, 2002
Docket No: 376.097

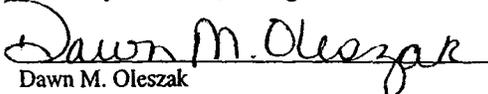
Attorney: ASM



09-25-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #39

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, Office of Program Control, Attn: May Yow, 2900 Crystal Drive, Arlington, VA 22202 on the date indicated below.


Dawn M. Oleszak

Date: 9-4-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 75/867,832

Filed: December 9, 1999

Registrant: Graber Products, Inc.

Mark: BIG EASY

CHANGE OF ADDRESS NOTIFICATION

Commissioner for Trademarks
Office of Program Control
Attn: May Yow
2900 Crystal Park Drive
Arlington, VA 22202-3513

Dear Sir:

Please change the correspondence address for the above-identified application to:

Andrew S. McConnell
BOYLE FREDRICKSON NEWHOLM STEIN & GRATZ, S.C.
250 East Wisconsin Avenue, Suite 1030
Milwaukee, WI 53202
Telephone: (414) 225-9755
Facsimile: (414) 225-9753

Respectfully submitted,


Andrew S. McConnell
Registration No. 32,272

Boyle, Fredrickson, Newholm, Stein & Gratz, S.C.
250 East Wisconsin Avenue, Ste. 1030
Milwaukee, WI 53202-4232
Telephone: (414) 225-9755
Facsimile: (414) 225-9753
Docket No.: 376.097 (4337-00097)

The stamp of the PTO hereon may be taken as acknowledging receipt of the date stamp of:

Attorney
File No.:

AGM
376.097

1. Trademark Application, Signed Application Drawing, 1 Specimen, Fee \$ _____
2. Trademark Application (ITU), Signed Application, Drawing, Fee \$ _____
3. Amendment/Response
4. Req. for Ext. of Time, ITU/Opp.: Fee \$ _____
5. Statement of Use, 1 Specimen, Fee \$ _____
6. Section 8 & 15 Declaration, Specimen, Fee \$ _____
7. Renewal Sec. 8 & 9 Request, Fee \$ _____
8. Designation of Domestic Representative
9. Change of Address Notification
10. C. of M./Express Mail, Label No.: _____



09-07-2001

U.S. Patent & TMO/TM Mail Rcpt Dt. #34

X

Serial No./Reg. No. 76/867,832 Date Sent 9-4-01
Mark: Big Easy Date Due _____