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TRADEMARK
Docket No. 032236.9040

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

RECOTON CORPORATION, Opposer, v. ADVENT NETWORKS, INC. Applicant.	Opposition No. 91150749 Serial No. 76/033,895

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TRIAL AND APPEAL BOARD
11-18-2002
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Assistant Commissioner for Trademarks
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Arlington, VA 22202-3513

OBJECTION TO OPPOSER'S DEFECTIVE MOTION
FOR SUMMARY JUDGMENT

Applicant Advent Networks, Inc. ("Applicant") hereby objects to Opposer Recoton Corporation's ("Opposer") defectively served and facially deficient motion for summary judgment. For the reasons stated below, Applicant respectfully requests that the Board disregard Opposer's defective motion or, in the alternative, set a response date to Opposer's motion that provides Applicant with the requisite notice required by law.

First, based upon the record, it is clear that Rochelle D. Alpert of the law firm of Brobeck, Phleger & Harrison LLP ("the Brobeck firm") is counsel of record for Applicant and its authorized representative in this opposition proceeding. Not only did Ms. Alpert of the Brobeck firm appear on behalf of Applicant in this proceeding when she executed and filed the Answer to the Notice of Opposition on Applicant's behalf and served the Answer on Opposer's representative, but Ms. Alpert and the other designated attorneys at the Brobeck firm (including

the undersigned) were appointed Applicant's representative in connection with the opposed application by virtue of the executed Power of Attorney filed in connection with the opposed application. *See* Declaration of Leslie C. McKnew in Support of Objection to Opposer's Defective Motion for Summary Judgment ("McKnew Decl."), Exs. A and B. Pursuant to Section 114.03 of the Trademark Trial and Appeals Board Manual of Procedure ("TBMP"), by filing the Answer on behalf of Applicant, Ms. Alpert of the Brobeck firm is Applicant's representative in this proceeding. TBMP § 114.03 ("[a]n attorney, as defined in 37 CFR 10.1(c), will be accepted as a representative of a party in a proceeding before the Board if the attorney . . . makes an appearance in the proceeding (as, for example, by filing a paper) on behalf of the party and satisfactorily identifies himself or herself as an attorney").

Despite the clear record that Ms. Alpert and the attorneys at the Brobeck firm are Applicant's representatives with respect to this proceeding, Opposer did not serve its motion for summary judgment on Ms. Alpert but, rather, served its motion directly on Applicant. McKnew Decl., Ex. C. Through several voice mail messages and correspondence, Ms. Denise Lo of the Brobeck firm has brought this defective service to the attention of Opposer's representative and has requested that Opposer's representative contact her to discuss a mutually agreeable date for Applicant's response to Opposer's motion that provides Applicant with the response time provided by law. McKnew Decl., Exs. D-F. To date, Opposer's representative has made no effort to reach such a mutually agreeable date, thereby leaving Applicant with no choice but to file this formal objection to its defective motion and request that the Board disregard Opposer's motion or, in the alternative, set a date for Applicant to respond to Opposer's motion that comports with the notice requirements provided by law. *Id.*

Second, in addition to Opposer's clearly defective service of its motion, Opposer's motion is deficient on its face because it not only fails to cite any supporting legal authority, but also fails to identify *even* one undisputed material fact or offer any admissible supporting evidence. Section 528.01 of the TBMP provides that "[a] party moving for summary judgment should specify, in its brief in support of the motion, the material facts which are undisputed." In contrast to this express requirement, Opposer's summary judgment motion does not cite any supporting legal authority, include any legal argument, specify any undisputed material facts, or cite any admissible evidence but, instead, merely lists unauthenticated and inadmissible documents. Opposer's failure to provide the Board with the minimum requirements for a motion for summary judgment is yet another ground pursuant to which the Board should disregard Opposer's defective motion.

In summary, Opposer's motion for summary judgement is deficient not only because it was not served properly, but because on its face it fails to satisfy the requirements necessary to warrant entry of a summary judgement. Accordingly, Applicant respectfully

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requests that the Board disregard Opposer's defective motion for summary judgment or, alternatively, set a date for Applicant's response to Opposer's motion that comports with the notice requirements mandated by law.

Dated: November 15, 2002

Respectfully submitted,

By: _____
Leslie McKnew

Rochelle D. Alpert
Leslie C. McKnew
Denise Lo
Attorneys for Applicant Advent Networks, Inc.

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TRADEMARK
Docket No.032236.9040

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

RECOTON CORPORATION, Opposer, v. ADVENT NETWORKS, INC. Applicant.	Opposition No. 91150749 Serial No. 76/033,895

DECLARATION OF LESLIE C. McKNEW IN SUPPORT OF OBJECTION TO OPPOSER'S DEFECTIVE MOTION FOR SUMMARY JUDGMENT

I, Leslie C. McKnew, declare as follows:

1. I am an attorney with law firm of Brobeck, Phleger & Harrison LLP, counsel for applicant Advent Networks, Inc. ("Applicant"). I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of Applicant's Answer to the Notice of Opposition executed and filed by Rochelle D. Alpert of the law firm of Brobeck, Phleger & Harrison LLP, with proof of service showing service on Mr. Loan Kennedy, Opposer's authorized representative.

3. Attached here to as Exhibit B is a true and correct copy of Applicant's Revocation of Power of Attorney and Power of Attorney Under 37 C.F.R. § 2.19 for Application Serial No. 76/033,895 for the mark ADVENT NETWORKS.

4. Attached here to as Exhibit C is a true and correct copy of the Certificate of Service for Opposer's Motion for Summary Judgment showing service on Ms. Irene Williams, Applicant's Vice President Legal.

5. Attached here to as Exhibit D is a true and correct copy of Ms. Denise Lo's November 8, 2002 letter to Mr. Loan Kennedy.

6. Attached here to as Exhibit E is a true and correct copy of Mr. Kennedy's November 11, 2002 letter to Ms. Lo.

7. Attached here to as Exhibit F is a true and correct copy of Ms. Lo's November 13, 2002 letter to Mr. Kennedy.

I declare that the foregoing statements are made of my own knowledge and are true and that all statements made on information and belief are believed by me to be true. I have been warned that willful, false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any resulting registration.

Dated: November 15, 2002

Leslie C. McKnew

TRADEMARK
Docket No. 032236.9040

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

In the Matter of Application No. 76/033,895
for the Mark ADVENT NETWORKS

RECOTON CORPORATION, Opposer, v. ADVENT NETWORKS, INC., Applicant.	Opposition No. 91150749

BPH Trademark Group
DOCKETED
JUL 03 2002

Box TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

ANSWER TO NOTICE OF OPPOSITION

Advent Networks, Inc. ("Applicant"), Applicant in the above-captioned matter, in accordance with Rules 2.106 and 2.116 of the Trademark Rules of Practice and Rule 8 of the Federal Rules of Civil Procedure, hereby timely answers the Notice of Opposition (the "Opposition") filed by opposer Recoton Corporation ("Opposer").

Applicant responds to the paragraphs of the Opposition as follows:

In response to the unnumbered introductory paragraphs of the Opposition, Applicant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein relating to Opposer's corporate status or address and therefore denies same. Applicant further expressly denies that Opposer will be damaged in any way by the registration of application Serial No. 76/033,895 (the "Application").

1. Applicant denies the allegations of paragraph 1 of the Opposition.

2. Applicant denies the allegations of paragraph 2 of the Opposition.

Further, Applicant denies each and every allegation of the Opposition not specifically admitted or otherwise responded to herein. Applicant specifically denies that Opposer is entitled to oppose the Application or to any other relief whatsoever against Applicant.

AFFIRMATIVE DEFENSES

By way of further answer and affirmative defenses, Applicant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

1. The Opposition fails to state a claim upon which any relief can be granted to Opposer.

SECOND AFFIRMATIVE DEFENSE

2. No damage or injury has resulted, will result, or can result to Opposer from registration of Applicant's ADVENT NETWORKS mark for the goods specified in the registration.

THIRD AFFIRMATIVE DEFENSE

3. Applicant's ADVENT NETWORKS mark is not identical in sight, sound or meaning to Opposer's ADVENT mark, Registration No. 1,008,947 for "audio equipment, namely microphones, microphone pre-amplifiers, frequency balance controls, noise reduction units and loudspeakers, tape decks and accessories therefore namely head cleaning tapes and dust covers."

FOURTH AFFIRMATIVE DEFENSE

4. The goods identified in Applicant's pending Application are not competitive with, related to, or even complementary to, any of the goods for which Opposer has registered the ADVENT mark in the United States. Applicant's goods are sold to sophisticated businesses in the telecommunications industry, whereas Opposer sells according to its ADVENT

Registration No. 1,008,947 consumer electronic goods, to wit, "audio equipment, namely microphones, microphone pre-amplifiers, frequency balance controls, noise reduction units and loudspeakers, tape decks and accessories therefore namely head cleaning tapes and dust covers."

FIFTH AFFIRMATIVE DEFENSE

5. Applicant is informed and believes, and on that basis alleges, that Opposer's claims are barred by estoppel in that Opposer has not pursued other users and/or registrants of ADVENT based marks in the United States for infringement or opposition even though their use is more related to Opposer's use than the goods for which Applicant seeks to register the mark are.

SIXTH AFFIRMATIVE DEFENSE

6. Applicant is informed and believes, and on that basis alleges, that Opposer's claims are barred by laches in that Opposer has not pursued other users of ADVENT based marks for infringement or Opposition even though their use is more related to Opposer's use than the goods for which Applicant seeks to register the mark are.

SEVENTH AFFIRMATIVE DEFENSE

7. Given the nature of Applicant's goods, Applicant's goods are not impulse items but technological products precluding any likelihood of confusion.

EIGHTH AFFIRMATIVE DEFENSE

8. Given the nature of Applicant's goods, Applicant's customers are sophisticated businesses alone precluding any likelihood of confusion.

NINTH AFFIRMATIVE DEFENSE

9. Opposer's ADVENT mark does not, and cannot, constitute a famous mark.

TENTH AFFIRMATIVE DEFENSE

10. Applicant has been using the name ADVENT NETWORKS, INC. since at least as early as 1999 without encountering any actual confusion with Opposer or Opposer's ADVENT marks.

ELEVENTH AFFIRMATIVE DEFENSE

11. Opposer's ownership of Registrations for the ADVENT mark outside the United States can not, and does not, establish the fame of Opposer's ADVENT mark.

TWELFTH AFFIRMATIVE DEFENSE

12. Applicant's use and registration of the ADVENT NETWORK mark cannot, and does not, dilute or tarnish any rights of Opposer.

WHEREFORE APPLICANT PRAYS:

1. That the Board dismiss the Opposition with prejudice;

2. That Application Serial No. 76/033,895 be allowed to proceed to registration; and

3. That any such other and further relief be granted as may be deemed reasonable and appropriate.

Dated: July 1, 2002

Respectfully submitted,

By: Rochelle D. Alpert

Rochelle D. Alpert
Attorneys for Applicant Advent Networks, Inc.

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San Francisco, Ca 94105
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In the Matter of Application No. 76/033,895
for the Mark ADVENT NETWORKS

RECOTON CORPORATION, Opposer, v. ADVENT NETWORKS, INC., Applicant.	Opposition No. 91150749

CERTIFICATE OF MAILING BY EXPRESS MAIL

BOX TTAB - NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

Express Mail Label No.: EL910818332US

Date of Deposit: July 1, 2002

I hereby certify that the enclosed Answer to Notice of Opposition (in triplicate) and receipt verification postcard are being deposited with the United States Postal Service Express Mail delivery as "Express Mail Post Office to Addressee" service under 37 C.F.R § 1.10 on the date indicated above, and is address to BOX TTAB - NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Respectfully submitted,

Jean Canedo

Jean Canedo

SFRLIB1\U3C\6184058.01

PROOF OF SERVICE BY MAIL
DEPOSIT AT BUSINESS

I, Jean Canedo, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this cause. My business address is Brobeck, Phleger & Harrison LLP, Spear Street Tower, One Market, San Francisco, California 94105.

On July 1, 2002, I served a copy(ies) of the following document(s):

ANSWER TO NOTICE OF OPPOSITION

by placing them in a sealed envelope(s) addressed as follows:

Attorney	**Party(ies) Served**
Loan B. Kennedy Vice President and General Counsel RECOTON CORPORATION 2960 Lake Emma Road Lake Mary, Florida 32746	Opposer

I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Brobeck, Phleger & Harrison LLP, , California. I am readily familiar with Brobeck, Phleger & Harrison LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence (with postage fully prepaid) is deposited with the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 1, 2002, at San Francisco, California.

Jean Canedo

J. Jean Canedo

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