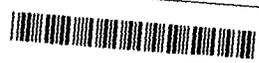


TAB

2020432

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

In the Matter of Trademark Application Serial No.: 76/232,553
Filed: March 29, 2001
Published January 22, 2002 at page TM 323



03-22-2002
U.S. Patent & TMOfo/TM Mail Rcpt Dt. #26

MAGID GLOVE AND SAFETY
MANUFACTURING COMPANY L.L.C.

Opposer,

v.

ARBILL INDUSTRIES, INC.

Applicant.

Opposition No.

NOTICE OF OPPOSITION

Opposer, Magid Glove and Safety Manufacturing Company L.L.C., a corporation duly organized and existing under the laws of Illinois, having a principle place of business at 2060 N. Kolmar Avenue, Chicago, Illinois, 60639, believes that it may be damaged by the registration of the product configuration trade dress shown in Application Serial No. 76/232,553 and accordingly opposes same.

As grounds for this opposition it is alleged that:

1. Applicant, Arbill Industries, Inc., filed Application Serial No. 76/232,553 on March 29, 2001 towards registration of a product configuration trade dress purportedly consisting of a thumb portion of a glove "having an offset seam" in International Class 25, as indicated by publication in the February 22, 2002 Official Gazette on page TM

323.

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2. Since at least March, 1984, long before the filing of Application Serial No. 76/232,553, Opposer has been manufacturing a variety of safety devices, and is aware of other gloves, including various types of industrial safety, work and other gloves having a variety of thumb configurations similar or identical to Applicant's proposed registration.

3. Opposer is the owner of U.S. Trademark Registration Nos. 1,245,759 for MAGID GLOVE AND SAFETY MFG. CO.; 1,524,232 for HANDMASTER; 1,599,433 for TOP GUNN; 1,615,526 for THE PROCESSOR; 1,599,431 for CLEAN KING; 1,686,097 for ROADMASTER; 1,740,948 for BLUE MAGIC; 1,713,189 for THERMATUF; 1,681,054 for MAGIC GLOVE; 1,249,727 for HEATER BEATER; 1,251,570 for WELD PRO; 1,123,156 for SUPER TANNED; 1,119,854 for SUPER STRONG; 2,340,758 for Me Too; 2,372,697 for JERSEYMASTER; 2,372,692 for DURAMASTER; 2,372,698 for TOUCHMASTER; 2,373,693 for TERRYMASTER; 2,372,694 for Knit Master; 1,123,157 for MAGID GLOVE CO.; 2,372,696 for MULTIMASTER; 1,122,707 for MAGID and Design; 2,488,134 for PRECISION SAFETY; 2,201,345 for GREYT SHADOW; 1,448,313 for PRECISION I; 1,466,231 for THE COMPETITOR; 1,645,009 for COMFORT FLEX; 2,501,954 for JERSEYMASTER PLUS; and 2,372,695 for SPARK GUARD, under which Opposer sells its industrial safety and work gloves having various thumb configurations similar or identical to Applicant's proposed registration.

COUNT I

4. Applicant's proposed product configuration does not and cannot serve to identify Applicant as to the source of its goods, as it is not and has not been the sole and exclusive source for this common product configuration.

5. Applicant's product configuration has failed to attain an acquired distinctiveness or secondary meaning.

6. Applicant's product configuration is therefore not registrable on the Principle Register because a product configuration can never be inherently distinctive, and can only be registered on a showing of acquired distinctiveness.

COUNT II

7. Opposer adopts and reavers the allegations in paragraphs 1-3.

8. Applicant's proposed product configuration incorporating a thumb portion of a glove "with an offset seam" is a design feature of the identified goods which serves a purely functional, utilitarian purpose.

9. Applicant's design feature may be superior to other available designs, thus providing Applicant with a significant non-reputation-related advantage.

10. If Applicant is permitted to use and register its product configuration in any class, it will have obtained patent-like protection for a purely functional, prior art design feature -- solely through its trademark application.

11. Applicant's proposed registration should therefore be refused because functional product configurations, particularly common ones present in the prior art, are not entitled to registration.

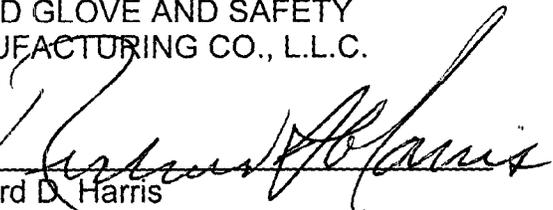
PRAYER FOR RELIEF

WHEREFORE, Opposer prays that Application Serial No. 76/232,553 on a product configuration consisting of purportedly a thumb portion of a glove with an offset seam be refused registration.

Respectfully submitted,

MAGID GLOVE AND SAFETY
MANUFACTURING CO., L.L.C.

Dated: March 22, 2002

By: 
Richard D. Harris
One of the Attorneys for Opposer

Richard D. Harris
Cameron M. Nelson
LAW OFFICES OF DICK AND HARRIS
181 West Madison Street, Suite 3800
Chicago, IL 60602
(312) 726-4000

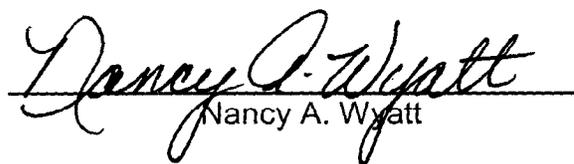
CERTIFICATE OF MAILING BY EXPRESS MAIL

In Re Applicant: Arbill Industries, Inc.
Serial No. 76/232,553
Filed: March 29, 2001
Published: January 22, 2002 at Page TM 323
Our File No. 2020432

Express Mail Mailing Label No. EL133313477US

Date of Deposit – March 22, 2002

I hereby certify that this Notice of Opposition is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" on the date indicated above and is addressed to the BOX TTAB FEE Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.


Nancy A. Wyatt