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THE UNITED STATES PATENT AND TRADEMARK OFFICE

In The Matter Of Application Serial No. 76/138,499: 3TWO.COM and Design
Published in the Official Gazette of April 23, 2002, Page TM 575 578 in Int'l Class 35

3COM CORPORATION)

Opposer,)

v.)

3TWO.COM, LLC)

Applicant.)

Opposition No. _____



11-20-2002

U.S. Patent & TMOrc/TM Mail Rcpt Dt. #75

**OPPOSER'S MOTION FOR LEAVE TO FILE
AMENDED NOTICE OF OPPOSITION**

Pursuant to Rules 2.107 and 2.127 of the Trademark Rules of Practice, and Rule 15(a) of the Federal Rules of Civil Procedure, Opposer, 3Com Corporation ("3Com"), requests leave to file an Amended Notice of Opposition attached hereto as Exhibit A. 3Com seeks to amend its Notice of Opposition because it incorrectly identified the Application Serial Number in its original Notice of Opposition. In support of its motion, 3Com states as follows:

1. On November 19, 2002, 3Com filed its Notice of Opposition against an application to register 3TWO.COM and Design by 3TWO.COM, LLC. The Notice of Opposition incorrectly identified the Application Serial Number for 3TWO.COM, LLC's application as 76/138,499. In fact, the correct Application Serial Number is 76/136,960.

2. The Board liberally grants leave to amend pleadings when justice so requires. Fed. R. Civ. P. 15(a); *Marmark, Ltd. v. Nutrexa, S.A.*, 12 U.S.P.Q.2d 1843, 1844 (T.T.A.B. 1989) (permitting opposer to add additional grounds for claims); *Boise Cascade Corp. v. Cascade Coach Co.*, 168 U.S.P.Q. 795 (T.T.A.B. 1970) (amending pleadings to conform to

CERTIFICATE OF EXPRESS MAIL UNDER 37 CFR 1.10
"Express Mail" Mailing Label No: EL393132438US Date of Deposit: November 20, 2002

I hereby certify that Trademark Application Under 15 U.S.C. § 1051(b) is being deposited with the United States Postal Service as "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to BOX TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Michelle Kelle

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proof). In ruling on a motion for leave to amend, the Board considers: 1) whether the amended claim is legally sufficient; and 2) whether the applicant will suffer undue prejudice in allowing the amendment. *Commodore Electronics Ltd. v. CBM Kabuskiki Kaisha*, 26 U.S.P.Q.2d 1503, 1505 (T.T.A.B. 1993). Here, 3Com's amended pleading meets both prongs of this test: its amended claims are legally sufficient, and the applicant will suffer no prejudice.

3. 3Com's amended pleading is legally sufficient because it does not add any new claims beyond the original pleading, and merely corrects the mis-identification of the Application Serial Number.

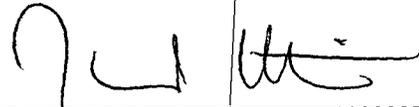
4. Applicant will not be prejudiced by the granting of 3Com's motion because the typographical error was discovered only one day after the original Notice of Motion was filed, there are no substantive changes or new claims in the amended Notice of Opposition, and applicant has not filed an answer.

WHEREFORE, 3Com respectfully requests that the Board grant 3Com's Motion for Leave to File an Amended Notice of Opposition, in the form attached hereto as Exhibit A.

Respectfully Submitted,

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON

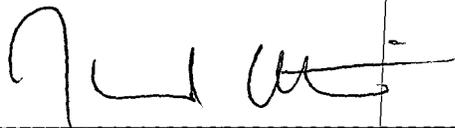
By



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(312) 554-8000
Attorneys for Applicant

CERTIFICATE OF SERVICE

I, Thad Chaloeintiarana, hereby certify that a copy of applicant's **OPPOSER'S MOTION FOR LEAVE TO FILE AN AMENDED NOTICE OF OPPOSITION** was served upon Lisa M. DuRoss, Esq., Harness, Dickey & Pierce, P.L.C., 5445 Corporate Drive, Troy, Michigan 48098, by first class mail, on this 20th day of November, 2002, postage prepaid.



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AMENDED NOTICE OF OPPOSITION

3Com Corporation, a Delaware corporation having a principal place of business at 5400 Bayfront Plaza, Santa Clara, California, believes it will be damaged by registration of the mark 3TWO.COM and Design, Application Serial No. 76/136,960, and opposes the same. As grounds for opposition, opposer alleges:

1. Since long prior to the filing date of the opposed application, opposer has continuously used 3COM in commerce as a trademark, and as part of its company name, in connection with the sale, advertising and promotion of various computer hardware and software products and related services.

2. Opposer has sold substantial quantities of these goods and services under its 3COM trademark and name, and has spent substantial sums to advertise and promote its 3COM trademark and name throughout the United States. As a result, opposer has built up and now owns a valuable goodwill which is symbolized by its 3COM trademark and name.

3. Opposer owns the following federal registrations for the mark 3COM:

Mark	Goods & Services	Registration Number
3COM	Computer peripheral equipment, namely, plug-in boards for placement in existing computers; and computer operating programs prerecorded on magnetic media in the form of disks and cassettes and user's manuals and instructions sold as a unit	1,320,456
3COM (Design)	Computers and computer peripherals, computer programs for use in network applications, computer network components; namely adapters, concentrators, bridges, hubs, cabling connectors, fiber optic digital communication cables and apparatus, network testers, and parts therefor, all for use in local, enterprise, metropolitan, and global area computer network environments.	1,792,438
3COM	Educational services, namely, conducting classes and workshops in the fields of computers, computer software, computer networks, computer networking peripherals, data communications and related technologies; and providing educational information via a global computer network in the fields of computers, computer software, computer networks, computer networking peripherals, data communication and related technologies	2,228,064
3COM (Design)	Computer consultation; computer network design for others; and providing information via a global computer network in the fields of computers, computer software, computer networks, computer networking, peripherals, data communications and related technologies	2,249,136
3COM	Computer consultation; computer network design for others; and providing information via a global computer network in the fields of computers, computer software, computer networks, computer networking, peripherals, data communications and related technologies	2,249,139
3COM	Installation, maintenance and repair of computer networking peripheral and related hardware	2,316,227

Mark	Goods & Services	Registration Number
3COM	Electronic personal organizers; telephone apparatus, namely, telephone apparatus, namely, telephones and speakerphones, facsimile transmission and receiving machines, telephone answering machines, voice mail machines, and video phones; computer network hardware and peripherals, including network interface cards, modems, modem cards, wireless modems, terminal adapters, hubs, local area network switches, wide area network switches, routers, servers, concentrators, power systems, consisting of uninterruptible and redundant power units and DC voltage converters; electrical connectors, computer cable and fiber optic cables; and computer software for use in managing, monitoring and diagnosing computer networks	2,364,947
3COM (Design)	Electronic personal organizers; telephone apparatus, namely, telephone apparatus, namely, telephones and speakerphones, facsimile transmission and receiving machines, telephone answering machines, voice mail machines, and video phones; computer network hardware and peripherals, including network interface cards, modems, modem cards, wireless modems, terminal adapters, hubs, local area network switches, wide area network switches, routers, servers, concentrators, power systems, consisting of uninterruptible and redundant power units and DC voltage converters; electrical connectors, computer cable and fiber optic cables; and computer software for use in managing, monitoring and diagnosing computer networks	2,364,948

These registrations are valid and subsisting and owned by opposer, and Reg. Nos. 1,320,456 and 1,792,438 are incontestable in accordance with 15 U.S.C. §§ 1065 and 1115(b).

4. Use and registration by applicant of the mark 3TWO.COM and Design for "providing analyses of sellers' goods and services, the value and pricing of sellers' goods, buyers' and sellers' performance, delivery and overall trading experience with respect to the sale of

goods by others via a global computer network and providing statistical, quantitative and qualitative information regarding the sale, trading and resale of items via a global computer network" is likely to result in confusion, mistake, or deception with opposer, or its products and services sold under its 3COM trademark and company name, or in the belief that applicant or its 3TWO.COM and Design services are in some way legitimately connected with, or licensed or approved by, opposer.

5. Upon information and belief, neither applicant nor any predecessor or related company of applicant has any claim of use of the mark 3TWO.COM and Design for the above stated services prior to October 2, 2000, applicant's filing date for Application Serial No. 76/136,960.

6. The proposed use by applicant of 3TWO.COM and Design is without opposer's consent or permission.

7. If applicant were granted registration of 3TWO.COM and Design for the services listed in Application Serial No. 76/136,960, applicant would obtain certain statutory rights, including prima facie rights to the exclusive use of that mark, which would damage opposer.

WHEREFORE, registration by applicant of 3TWO.COM and Design for the goods listed in Application Serial No. 76/136,960 would be damaging to opposer.

Please address all correspondence to Raymond I. Geraldson, Pattishall,
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Respectfully submitted,

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