

TTAB

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

MAG INSTRUMENT, INC.)
)
Opposer,)
)
v.)
)
CLARITI EYEWEAR, INC.)
)
Applicant.)
_____)

Opposition No.: 91157711
Application Serial No.: 76/ 466,372
Filing Date: November 4, 2002
Publication Date: July 22, 2003
Trademark: MAGAIR
International Class: 09



01-08-2004
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

United States Department of Commerce
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Response to Order to Show Cause

Applicant Clariti Eyewear, Inc. ("Applicant") responses to the Trademark Trial and Appeal Board's order to show cause why judgment by default should not be entered against Applicant in accordance with Fed. R. Civ. P. 55(b) mailed on December 19, 2003 as follows:

1. The Applicant has filed a trademark registration application for the mark "MAGAIR" on November 4, 2002. The mark "MAGAIR" was published for opposition on July 22, 2003.

2. Mag Instrument, Inc. (“Opposer”) has filed an opposition, Opposition No. 91157711, to the proposed mark “MAGAIR” in the Trademark Trial and Appeal Board on August 21, 2003.

3. The parties started to negotiate a possible settlement immediately after the Applicant received the Notice of Opposition. The parties are currently continuing their negotiation.

4. A part of the parties’ effort to negotiate a settlement is reflected in a letter dated October 6, 2003 from the counsel representing the Applicant to the counsel representing the Opposer. A true and correct copy of the October 6, 2003 letter is attached hereto as Exhibit A.

5. In order to save cost, the parties, through their respective counsel, have agreed that the Applicant should not be required to file an Answer to the Notice of Opposition until a later date if the case is not settled.

6. On or about December 23, 2003, the counsel entered into a stipulation regarding the filing of the Answer to the Notice of Opposition. The parties agreed that the Applicant should not be required to file the Answer to the Notice of Opposition until March 1, 2004 if the case is not settled by that time. A true and correct copy of the stipulation is attached hereto as Exhibit B.

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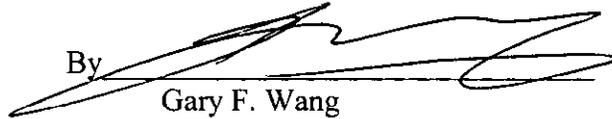
7. In light of the continuing negotiation and the agreement between the parties, the Applicant respectfully requests that the Trademark Trial and Appeal Board does not enter judgment by default against the Applicant in this case.

Respectfully submitted,

LAW OFFICES OF ROGER C. HSU

Dated: January 5, 2004

By

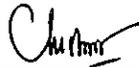


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Attorneys for the Applicant
Clariti Eyewear, Inc.

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to: United States Department of Commerce, Patent and Trademark Office, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on January 5, 2004.

Signed: January 5, 2004

By:



Christina Kusnandar

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OF COUNSEL
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ROBERT P. SIEVERS

*Registered Patent Attorney in the U.S.
Patent and Trademark Office
†Also Admitted in the State of New York
‡Certified Family Law Specialist

October 6, 2003

Via Facsimile (213) 243-2539
and First Class U.S. Mail

Jerrold B. Reilly, Esq.
Johns Day
555 W. 5th Street, Suite 4600
Los Angeles, California 90013

Re: Oppositions to U.S. Trademark Applications
for the marks "AIRMAG" and "MAGAIR"
Opposition Nos.: 91,157,709 and 91,157,711
Matter Numbers 10005-01 and 10005-02

Dear Mr. Reilly:

This is to follow up our telephone conference last Friday morning regarding the above-identified trademark oppositions filed in the U.S. Patent and Trademark Office.

As we have discussed during the conference, our client is willing to abandon the application for the mark "MAGAIR" and limit the description of goods and services for the mark "AIRMAG" to reflect only eyeglasses products in exchange of your client's agreement to withdraw the opposition to the registration of the mark "AIRMAG."

Clariti Eyewear, Inc. is an eyeglasses manufacturer and distributor. Its products are mainly distributed to optometrists and eyeglasses retail stores. We do not believe that the distribution channels of our client's products will overlap with the distribution channels of your client's products. Our client is willing to enter into a co-existence agreement with your client to allow the mark "AIRMAG" co-exist with your client's existing trademarks in the marketplace.

I believe that this offer to settle the dispute is a reasonable one. I also believe that settle this dispute in the early stage of the opposition process will benefit both of our respective clients.

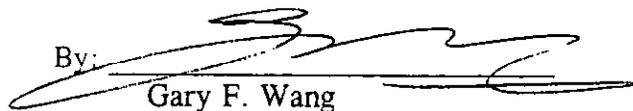
Letter to Jerrold B. Reilly, Esq.
Johns Day
October 6, 2003
Page 2

We also agreed during our telephone conference that if our clients cannot reach a resolution one week before the due day (October 20, 2003) of the answer to the oppositions, you will agree to stipulations of extension of time for two (2) weeks to file answers, and two (2) weeks of extension to all other dates set by the Trademark Office.

If you have any question regarding this matter, please contact me immediately. I am looking forward to hearing from you.

Sincerely yours,

LAW OFFICES OF ROGER C. HSU

By: 
Gary F. Wang

cc: Clariti Eyewear, Inc. (Via Facsimile)

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Stipulation

Mag Instrument, Inc. ("Opposer") and Clariti Eyewear, Inc. ("Applicant") (collectively "Parties") stipulate as follows:

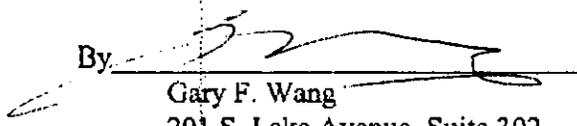
1. The Applicant has filed a trademark registration application for the mark "MAGAIR" on November 4, 2002. The mark "MAGAIR" was published for opposition on July 22, 2003.
2. The Opposer has filed an opposition, Opposition No. 91157711, to the proposed mark "MAGAIR" in the Trademark Trial and Appeal Board on August 21, 2003.
3. The Parties started to negotiate a possible settlement immediately after the Applicant received the Notice of Opposition. The Parties are currently continuing their negotiation.

4. Because of the continuing negotiation, the Parties agree that the Applicant should not be required to file an Answer the Notice of Opposition until March 1, 2004 if the case is not settled by that time.

Respectfully submitted,

LAW OFFICES OF ROGER C. HSU

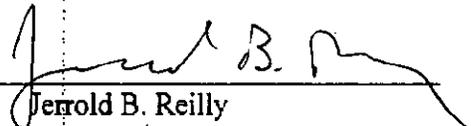
Dated: December 24, 2003

By 

Gary F. Wang
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Attorneys for the Applicant
Clariti Eyewear, Inc.

JONES DAY

Dated: December 23, 2003

By 

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(213) 489-3939
Attorneys for the Opposer
Mag Instrument, Inc.