

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

In the matter of trademark application Serial No. 76/401,534
Published in the Official Gazette (Trademarks) on July 15, 2003.

S&G Consulting, Inc.

Opposer,

v.

Credit Union Careers, Inc.

Applicant.

Opposition No. 91158156



12-17-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

BOX TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202

APPLICANT'S REPLY TO OPPOSER'S OPPOSITION
TO APPLICANT'S MOTION TO DISMISS

Applicant, CREDIT UNION CAREERS, INC., by and through its attorneys, HAROLD J. FASSNACHT and BULLWINKEL PARTNERS, LTD., hereby replies to Opposer's Opposition to Applicant's Motion to Dismiss as follows:

1. Opposer brought its opposition under Section 2(d) of the Lanham Act.
2. In order to prevail on a claim for relief under Section 2(d), an opposer must prove and prove that it has a proprietary interest in its mark *and* that interest was obtained prior to the filing date of applicant's intent-to-use application. Miller Brewing Co. v. Anheuser-Busch 127 USPQ2d 1711, 1714 (T.T.A.B. 1993).

3. Opposer in this case has not pleaded a fact that would, if proved, establish that it had used its mark "HUMAN RX" prior to the filing date of Applicant's ITU application (27 USPQ2d 1711, 1714 (T.T.A.B. 1993)).
4. Opposer has merely alleged that it is the "senior user" of the mark "HUMAN RX" (27 USPQ2d 1711, 1714 (T.T.A.B. 1993)).



in commerce as regulated by Congress.

5. The "senior user" of a trademark is the first user of the mark. Brookfield Communications v. West Coast Entertainment Corp., 50 U.S.P.Q.2d 1545, 1551 (9th Cir. 1999).

6. Even if Opposer could prove that it is the senior, i.e. first, user of the trademark "HUMAN RX", that proof does not establish that Opposer used its mark prior to April 29, 2002. For example, since Applicant has never used Opposer's mark "HUMAN RX" in interstate commerce, then Opposer could prove that it is the senior user of the mark "HUMAN RX" merely by proving any date of use, even a date of use subsequent to Applicant's ITU filing date of April 29, 2002.

7. Opposer's pleading that it is the senior user of the mark "HUMAN RX", even if proved, does not establish grounds for relief under Section 2(d).

Wherefore Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice and that Applicant be awarded its fees and costs and such other relief as is just and equitable.

Respectfully submitted,

CREDIT UNION CAREERS, INC.

By: Harold J. Fassnacht
One of their Attorneys

Harold J. Fassnacht
George E. Bullwinkel
Bullwinkel Partners, Ltd.
19 S. LaSalle Street
Suite 1300
Chicago, Illinois 60603
312/201-0777

CERTIFICATE OF EXPRESS MAIL

Pursuant to 37 CFR Section 1.10, the undersigned certifies that this communication was deposited with the U.S. Postal Service, "Express Mail Post Office Addressee" service on 12-17, 2003 and addressed to Box TTAB, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202. The "Express Mail" mailing label number is



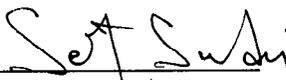
Sety Sadri

CERTIFICATE OF SERVICE

I hereby certify that on this 17~~th~~ day of December, 2003, a copy of the foregoing APPLICANT'S REPLY TO OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO DISMISS was served on the following party by first class mail, postage prepaid to the following address:

Bruce H. Little, Esq.
LINQUST & VENNUM, P.L.L.P.
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2274

Fax No. 612-371-3207



Sety Sadri