

TTAB

*Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035
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November 5, 2004

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

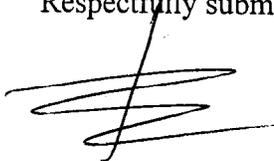
In re Application Serial No. : 78/320850
Mark : ENYCE
International Class : 12
Applicant : Cary Berman
Filed : October 30, 2003
Published : August 24, 2004

Dear Sir/Madam:

Enclosed for filing in the above captioned matter are the original and one copy of the following:

1. ANSWER TO OPPOSER'S NOTICE OF OPPOSITION

Respectfully submitted,



Cary Berman

CC: Carole E. Klinger, Esquire



11-16-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #72

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

Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035
(610) 227-5600

L. C. Licensing, Inc.

Opposer,

v.

CARY B. BERMAN

Applicant

In re Application Serial No. : 78/320850
Mark : ENYCE
International Class : 12
Applicant : Cary Berman
Filed : October 30, 2003
Published : August 24, 2004

Opposition No. 91162330
Serial No. 78320850

**ANSWER TO OPPOSER'S NOTICE
OF OPPOSITION**

Applicant, representing himself pro se submits this ANSWER to Opposer's NOTICE OF OPPOSITION which was mailed by the Opposer to the Commissioner for Trademarks on September 22, 2004 and mailed to Applicant's former contact address on September 30, 2004.

The Applicant is Cary Berman. Cary Berman is a law abiding U.S. citizen living at 1917 Lafayette Rd., Gladwyne, Pa. 19035. Applicant is not represented by council and represents himself pro se. Applicant respectfully asks that all parties please correspond directly with Applicant at the address listed.

Applicant believes that it should receive registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004.

Applicant independently thought to use ENYCE on automobile products and was not aware that ENYCE was ever used on anything if it actually has been used. ENYCE is simply an abbreviation for New York City with the letter "E" on each side to represent electronic commerce. Applicant has a history in the automotive product industry. Specifically Applicant has utilized the internet to show a consumer what the automotive product will look like if installed on an automobile. Applicant respectfully asks that the parties review U. S. Patent Application 09/400.600 and U.S. Patent Application serial No. 09/625,950.

Answers to NOTICE by numbered paragraph.

1. Applicant does not have the knowledge to agree or disagree with the statement made in paragraph number 1 and has never witnessed opposer's Mark in conjunction with said products.

2. Applicant does not have the knowledge to agree or disagree with the statement made in paragraph number 2 and has never witnessed opposer's Mark in conjunction with said products.

3. Applicant does not have the knowledge to agree or disagree with the statement made in paragraph number 3 and has never witnessed opposer's Mark in conjunction with said products.

4. To simplify this correspondence Applicant agrees with the statement made in number 4.

5. Applicant does not have the knowledge to agree or disagree with the statement made in paragraph number 5 and if it is proven that this statement is factual it will be the first time Applicant will be aware of same.

6. Applicant does not have the knowledge to agree or disagree with the statement made in paragraph number 6 and if it is proven that this statement is factual it will be the first time Applicant will be aware of same.

7. Applicant does not have the knowledge to agree or disagree with the statement made in paragraph number 7 and if it is proven that this statement is factual it will be the first time Applicant will be aware of same

8. Applicant disagrees with the wording "Opposer's highly distinctive, identical mark" but agrees that it seeks registration for the mark ENYCE for the automotive products that are listed in International Class 12.

9. If the allegations listed in paragraph's 1,2,3 & 5 are proven to be fact, Applicant does not believe that consumers are aware of said Mark as applicant was not aware of said Mark. If an individual consumer was aware of Opposer's Mark, said consumer would not be confused with applicants Mark as the goods, services and products of International Class 25 have nothing in common with the goods, services and products of International Class 12. As an example consumer's do not confuse DELTA faucets with DELTA airlines and confusion would not exist in this case either.

Applicant therefore respectfully asks that the Board grant registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE to Applicant.

Please direct all communications regarding this proceeding to the Applicant at the address below.

SUBMITTED this 5th day of November, 2004.

CARY BRETT BERMAN



Cary Brett Berman
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CERTIFICATE OF SERVICE

I, Cary Berman, hereby certify that true and correct copies of the foregoing ANSWER TO OPPOSER'S NOTICE OF OPPOSITION were served on Opposer by priority mailing same (with delivery conformation) to Carole E. Klinger, Esq., 919 Third Ave., New York, NY. 10022 this 5th day of November 2004.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Cary Berman

UNITED STATES DEPARTMENT OF
COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: September 30, 2004

Opposition No 91162330
Serial No. 78320850

Evelyn H. McConathy
Dilworth Paxson LLP
3200 Mellon Bank Center, 1735 Market St
Philadelphia, PA 19103

L.C. LICENSING, INC

v.

Berman, Cary

CAROLE E. KLINGER
KRAMER LEVIN NAFTALIS & FRANKEL LLP
919 THIRD AVENUE
NEW YORK, NY 10022

Shelley Jamison, Legal Assistant

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the

Trademark Trial and Appeal Board Manual of Procedure (TBMP), are available at www.uspto.gov.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open:	October 20, 2004
Discovery period to close:	April 18, 2005
30-day testimony period for party in position of plaintiff to close:	July 17, 2005
30-day testimony period for party in position of defendant to close:	September 15, 2005
15-day rebuttal testimony period for plaintiff to close:	October 30, 2005

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

Trademark Office for recordation of same, is attached hereto as Exhibit A), believes that it would be damaged by a grant of a registration to Cary Berman, an individual residing at 1917 Lafayette Road, Gladwyne, PA 19035 (hereinafter "Applicant"), Applicant for Application Serial No. 78/320,850 for the mark ENYCE filed in International Class 12 on October 30, 2003 and published for opposition on August 24, 2004 (hereinafter the "Application"), and hereby opposes said Application.

The grounds for opposition are:

1. Opposer is the owner of Federal Registration No. 2093751, for the mark ENYCE issued September 2, 1997 for "apparel and headwear for men, women and children, namely, hats, caps, visors, headbands, shirts, jackets, jogging suits, pants, coats, T-shirts, shorts, tanktops, skirts, warm-up suits, sweatshirts and sweatpants", in International Class 25. This registration claims a date of first use and date of first use in commerce at least as early as August 31, 1996.

A true copy of this registration is attached as Exhibit B.

2. Opposer is the owner of Federal Registration No. 2,351,411, issued May 23, 2000 for the mark ENYCE & Design for "apparel and headwear for men, women and children, namely hats, caps, visors, headbands, shirts, jackets, jogging suits, pants, coats, t-shirts, shorts, tank tops, skirts, warm up suits, sweatshirts and sweatpants", in International Class 25. This registration claims a date of first use and date of first use in commerce at least as early as August

1996. A true copy of this registration is attached as Exhibit C.

3. Opposer is the owner of Federal Registration No. 2,338,404, for the mark LADY ENYCE issued April 4, 2000 for "women's clothing, namely, shirts, tops, bottoms, pants, jackets, coats, jogging suits, warm-up suits, T-shirts, polo shirts, tank tops, skirts, shorts, denim shirts, denim pants, denim tops, denim bottoms, denim shorts, denim skirts, sweat shirts, sweat pants, sweat shorts, headwear, caps, hats", in International Class 25. This registration claims a date of

first use and date of first use in commerce at least as early as July 1998. A true copy of this registration is attached at Exhibit D.

4. The above-referenced marks, namely, ENYCE, ENYCE & Design and LADY ENYCE, are hereinafter referred to collectively as "Opposer's Marks".

5. Opposer's Marks identify Opposer as a source of a variety of urban streetwear fashion consumer goods.

6. Opposer's Marks and products have been the subject of extensive press and media coverage.

7. In part due to the media attention given to Opposer's Marks, and in part due to Opposer's extensive use of Opposer's Marks, they have acquired enormous value and good will and have become extremely well-known and famous.

8. The Application seeks registration of Opposer's highly distinctive, identical mark -- ENYCE -- for "custom automotive accessories, namely, fitted car covers, shift knobs, brake pads and wheels for land vehicles, license plate holders and spoilers for vehicles", in International Class 12.

9. Given the highly unique nature of Opposer's Marks, there is a strong likelihood that consumers, viewing the mark ENYCE in respect of the goods for which registration is sought, are likely to believe that such goods derive from the same source as the goods sold under Opposer's Marks, or are affiliated, connected, associated, sponsored, approved or authorized by Opposer. Accordingly, issuance of a registration of the ENYCE mark to Applicant would seriously damage Opposer in that it would be likely to cause confusion, deception or mistake among consumers and dilute the distinctiveness of Opposer's Marks.

WHEREFORE, Opposer prays that this opposition be sustained and that Application Serial No. 78/320,850 for the proposed mark ENYCE be refused registration.

This Notice is being filed in duplicate and the amount of \$300.00 is hereby authorized to be charged to Deposit Account No. 50-0540 to cover the requisite filing fee. Please charge any additional fees and/or credit any overpayments to Deposit Account No. 50-0540.

Please direct all communications regarding this Opposition proceeding to Opposer's counsel at the address shown below.

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Attorneys for Opposer

Date: September 22, 2004

By: Carole E. Klinger

Carole E. Klinger, Esq.
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