

TTAB

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

1 62330
OPPOSITION

Carole E. Klinger, Esq.
919 Third Ave.
New York, NY. 10022

November 19, 2004

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

Dear Ms. Klinger:

I am writing to you today after receiving your e-mail dated 11/18/2004 (copy enclosed). Be assured that I will not sell automobile accessories under the ENYCE mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies your opposition.

Please read the documents sent as I only used Delta as an "example". You and your client have your position in this matter and I have mine. This is why we have the legal system that we have in this country. Please do not try to act as my attorney.

I would like to begin with the discovery portion of this matter and I enclose for your convenience another copy of the letter sent yesterday. Please respond to this letter.

Respectfully submitted,



Cary Berman

CC: United States Department of Commerce
Patent and Trademark Office



11-26-2004

Subj: **Opposition No. 91162330 to U.S. Appl. Serial No. 78320850 for ENYCE in International Class 12**
Date: 11/18/2004 2:01:19 PM Pacific Standard Time
From: CKlinger@KRAMERLEVIN.com
To: autocary@aol.com

Dear Mr. Berman:

We are writing on behalf of our client, L.C. Licensing, Inc. regarding the above-referenced opposition proceeding. We have now had the opportunity to review your answer to the opposition, and urge you to consult an attorney to advise you with regard to the defenses which you have alleged. If you persist in this matter, we will point out to the Trademark Office that your defenses are without merit because:

(1) DELTA is not analogous is to ENYCE. DELTA is not only a letter in the Greek alphabet, but also has several other commonly used definitions. Therefore, not surprisingly, a search of the U.S. Patent & Trademark Office records reveals that there are 1559 marks containing the term DELTA, and only eleven (11) of them are owned or affiliated with Delta Airlines. In contrast, ENYCE is a unique, arbitrary term. A search of the U.S. Patent & Trademark Office records for ENYCE reveals that there are eleven (11) live applications containing the term, all of which are owned by L.C. Licensing, Inc. except for your application. This is clearly a very different situation than that presented by DELTA.

(2) There is potential for confusion should you and our client both use the mark ENYCE. The products offered by you and/or your company are products which are likely to be purchased by our client's customer base. Consequently, consumers viewing the mark ENYCE in respect of the your company's goods will believe that such goods derive from, or are connected with our client. To this point, our client advertises in DUB magazine which prominently features cars and car accessories as well as urban streetwear. This highlights the overlap between the consumers of our client's goods and those of your company, and the possibility of confusion arising therefrom.

We urge you to reconsider your position and abandon your application for ENYCE in Class 12. If you fail to do so our client will aggressively pursue its Opposition. If you commence the sale of automotive accessories under the ENYCE mark, our client will take appropriate action.

Carole Klinger

Associate
Kramer Levin Naftalis & Frankel LLP
919 Third Avenue
New York, New York 10022
Tel: 212-715-9357
Fax: 212-715-8000
Email: CKlinger@KRAMERLEVIN.com
<http://www.kramerlevin.com>

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

Carole E. Klinger, Esq.
919 Third Ave.
New York, NY. 10022

November 18, 2004

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

Dear Ms. Klinger:

I would like to conduct discovery in the above referenced matter. I am hopeful that we can cooperate with each other and communicate concerns accordingly. In that respect please call me at any time at the number listed above.

Your filing listed previously issued trademarks. I would like to depose the individual or individuals that first thought of the trademarks you referenced. I would also like to depose the individual or individuals that first applied for the trademarks you referenced if that person(s) is different that the person(s) that thought of the trademarks referenced.

Please provide possible dates and locations for said deposition(s). If you cannot produce said person(s), please provide the last known address for said person(s). Thank you for your cooperation.

Respectfully submitted,



Cary Berman

CC: United States Department of Commerce
Patent and Trademark Office