

TTAB

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 24, 2005

Opposition No 91163884
Serial No. 78033719

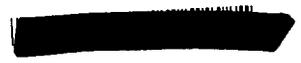
Read & Seal. LLC
IRVINE CENTER
8001 IRVINE CENTER DR STE 400
IRVINE, C 92618-2956

O' Neil Product Development, Inc.

v.

Read & Seal. LLC

Bruce B. Brunda
Stetina Brunda Garred & Brucker
75 Enterprise, Suite 250
Aliso Viejo, CA 92656



02-14-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #66

Torri Rodgers, 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/web/offices/dcom/ttab/.

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: **February 13, 2005**

Discovery period to close: **August 12, 2005**

30-day testimony period for party
in position of plaintiff to close: **November 10, 2005**

30-day testimony period for party
in position of defendant to close: **January 09, 2006**

15-day rebuttal testimony period
for plaintiff to close: **February 23, 2006**

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>.

Case: ONELL-012M
Trademark Application

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN RE SERIAL NO. 78/033,719

O'NEIL SOFTWARE, INC.) Opposition No.:
)
Opposer,)
)
vs.)
)
READ & SEAL, LLC)
)
Applicant.)
_____)

NOTICE OF OPPOSITION

Box TTAB - Fee
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

In the matter of the application of Read & Seal, LLC of Irvine, California (hereinafter "Applicant") for registration of the trademark RSWEB, Applicant Application Serial No. 78/033,719, published in the Official Gazette of November 30, 2004, at TM 160, O'Neil Software, Inc., a California corporation, with offices at 11 Cushing, Irvine, California 92618 (hereinafter "Opposer"), believes that it will be

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damaged by registration of the mark shown in Serial No. 78/033,719, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is and has been for many years engaged in the extensive design, development, advertising, marketing and commercialization of a variety of products, including software record management, namely, interfacing record management software to the World Wide Web. In connection therewith, Applicant has not yet disclosed or indicted the dates of first use for the mark at issue. Opposer has used in interstate commerce, the mark RS WEB (hereinafter referred to as the RS WEB Trademark) for the aforementioned goods for many years.

2. Since at least as early as April 2000, Opposer has made use of its RS WEB Trademark throughout the United States in interstate commerce. Opposer has registered RS WEB trademark on October 7, 2003, Registration No. 2,772,104 for software record management, namely, interfacing record management software to the World Wide Web. (copy attached as **Exhibit 1**)

3. Opposer has expended considerable sums in exerting every effort to maintain the highest standard of quality for its products, and has created valuable goodwill among the purchasing public under its RS WEB Trademark.

4. As a result of the continuous and extensive use of the RS WEB Trademark by Opposer, that mark has become and continues to function as a valuable business and marketing asset of Opposer, and serves to indicate to the trade and consuming public the products originating from Opposer and its authorized representatives.

5. Notwithstanding Opposer's rights in and to said RS WEB Trademark, Applicant, on information and belief, filed an application for registration of RSWEB, in International Class 009 on November 3, 2000 for computer software for web site development that enables the user to automatically retrieve web content from a predetermined set of urls (source content) and to automatically incorporate that source content into a new web site (target content) which is automated through the use of a predetermined set of rules to define the modification from source content to the target content for use in electronic commerce that may be downloaded from a global computer network. Said application was published for opposition in the Official Gazette of November 30, 2004 at TM 160.

6. Pursuant to Trademark Rules of Practice 2.102, Opposer filed a Request to Extend Time for Filing this Notice of Opposition to January 29, 2005. A copy of said Request to Extend Time is attached hereto as **Exhibit 2**.

7. Applicant's RSWEB, mark is confusingly similar to Opposer's RS WEB Trademark and its registration and use by Applicant on the goods claimed in the subject application is likely to cause confusion, deception and mistake.

8. Applicant's use of the mark RSWEB, interferes with Opposer's use of its RS WEB Trademark and use of, or registration of, the mark RSWEB, by Applicant will seriously damage Opposer.

WHEREFORE, Opposer believes that it will be damaged by said registration and prays that registration of the mark RSWEB, to Applicant be denied.

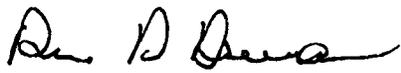
The filing fee for this Opposition in the amount of \$300 (one international class) is enclosed and this Opposition is enclosed herewith in triplicate.

Opposer's representative authorizes the charging of any additional fees to its Deposit Account No. 19-4330.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: January 3, 2005

By: 
Bruce B. Brunda, Reg. No. 28,497
75 Enterprise, Suite 250
Aliso Viejo, CA 92656
(949) 855-1246
Counsel for Opposer

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The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



A handwritten signature in cursive script, appearing to read "James H. Jones".

Director of the United States Patent and Trademark Office

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

United States Patent and Trademark Office

Reg. No. 2,772,104

Registered Oct. 7, 2003

**TRADEMARK
PRINCIPAL REGISTER**

RS WEB

**O'NEIL SOFTWARE, INC. (CALIFORNIA COR-
PORATION)
8 MASON
IRVINE, CA 92618**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "WEB", APART FROM THE MARK
AS SHOWN.**

**FOR: SOFTWARE RECORD MANAGEMENT,
NAMELY, INTERFACING RECORD MANAGE-
MENT SOFTWARE TO THE WORLD WIDE WEB,
IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).**

SN 76-123,791, FILED 9-8-2000.

FIRST USE 2-0-2000; IN COMMERCE 4-0-2000.

ZHALEH DELANEY, EXAMINING ATTORNEY

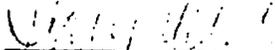
ATTORNEY DOCKET NO: ONEIL-000
MARK: RSWEB

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner of Trademarks
PO Box 1451
Alexandria, VA 22313-1451

on December 15, 2004



(Signature)

Stacy Wilson
(Typed name of person signing certificate)

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

1. Return Postcard;
2. Transmittal (in triplicate); and
3. FIRST REQUEST TO EXTEND TIME FOR FILING NOTICE OF OPPOSITION (in triplicate);
4. Certificate of Mailing.

LAW OFFICES
Stetina Brunda Garred & Brucker
A PROFESSIONAL CORPORATION
PATENT, TRADEMARK, COPYRIGHT AND UNFAIR COMPETITION CAUSES

75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656

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bbrunda@stetinalaw.com

December 15, 2004

Commissioner for Trademarks
PO Box 1451
Alexandria, VA 22313-1451

Re: Serial No. 78/033,719
Mark: RSWEB
Our Reference: ONEIL-000

Dear Sir/Madam:

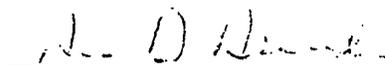
Enclosed herewith for filing in the above-identified matter are the following:

1. Return Postcard;
2. Certificate of Mailing;
3. Transmittal (in triplicate); and
4. First Request for Extension of Time to Oppose (in triplicate).

Please charge any additional fees to Deposit Account No. 19-4330. This Transmittal Letter is enclosed herewith in triplicate.

Respectfully submitted,

By:



Customer No. 007663

Attorney Bruce B. Brunda, Reg. No. 28,497
STETINA BRUNDA GARRED & BRUCKER
75 Enterprise, Suite 250
Aliso Viejo, CA 92656
(949) 855-1246

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Dear Sir:

Please date stamp and return this card,
adding the serial number assigned where
applicable.

(BBB/saw)

Date Mailed: December 15, 2004

Docket Number: ONEIL-000

Serial No.: 78/033,719

Filing Date: November 3, 2000

Title: RSWEB

Papers transmitted herewith:

1. Return Postcard;
2. Transmittal (in triplicate); and
3. FIRST REQUEST TO EXTEND TIME FOR
FILING NOTICE OF OPPOSITION (in triplicate);
4. Certificate of Mailing.

Case: ONEIL-000

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

In Re: Read & Seal, LLC)
Serial No.: 78/033,719)
Filed: November 3, 2000)
For the Mark: RSWEB)
)

FIRST REQUEST UNDER RULE 2.102 TO EXTEND TIME
FOR FILING NOTICE OF OPPOSITION

Commissioner for Trademarks
PO Box 1451
Alexandria, VA 22313-1451

Dear Sir/Madam:

In the matter of the above-identified application, which was published in the Official Gazette on November 30, 2004, at TM 160, O'Neil Product Development, Inc., through its attorneys, requests that the time for filing a Notice of Opposition to the subject application be extended for a period of thirty (30) days until January 29, 2005.

This is the first request for an extension of time. This extension is necessary to enable counsel to confer with potential Opposer to determine whether an opposition might be required.

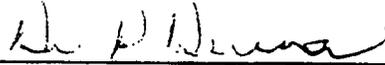
The subject Extension of Time is not entered into for purposes of delay, and it is therefore respectfully requested that the Board grant the requested Extension of Time.

Please charge any fees which may be due in relation to this matter to Deposit Account
Number 19-4330.

Respectfully submitted,

Date: December 15, 2004
Customer No. 007663

By:



Bruce B. Brunda
Registration No. 28,497
STETINA BRUNDA GARRED & BRUCKER
75 Enterprise, Suite 250
Aliso Viejo, CA 92656
(949) 855-1246

BBB/saw

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