

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

INSPIRATION SOFTWARE, INC.)	
)	
Opposer,)	
)	
v.)	Opposition No. 91164083
)	
TEACHER INSPIRED PRACTICAL STUFF, INC.)	
)	
Applicant.)	

Attn: Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO DISMISS

Introduction

For reasons which follow, opposer Inspiration Software, Inc. requests that the Board deny applicant's Motion to Dismiss Notice of Opposition which applicant filed and served by mail on May 20, 2005.

Applicant contends that opposer's allegations of damage are insufficient as a matter of law. Opposer disagrees because applicant's mark T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF was identified in a published application with goods recited as "printed course materials, books, lesson plans, theme units and curriculum support materials, all featuring academic subjects, for the education of elementary school students, in International



Class 16; and educational services, namely, providing learning centers featuring instruction in academic courses for elementary school students, in International Class 41.” As noted in opposer’s Notice of Opposition, opposer owns U.S. trademark and service mark registrations for the mark INSPIRATION. Opposer’s INSPIRATION mark is used for the following goods and services: computer programs in the field of idea development through visual diagramming, outlining and text creation, in International Class 9; computer education training, in International Class 41; and computer software design for others, in International Class 42.

Opposer’s market is the education market, which includes K-12, colleges, universities, and the adult education industry including corporate training and lifelong learning. Opposer also owns allowed U.S. Trademark Application Serial No. 76/075,247 for the mark INSPIRED for “computer software for use as a writing tool in education, home and business”. Opposer’s use of INSPIRATION is senior to applicant’s use of T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF, and Opposer’s allowed intent-to-use application for INSPIRED is senior to applicant’s use of T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF.

Argument

In applicant’s Motion to Dismiss Notice of Opposition, applicant summarily analyzes likelihood of confusion (focusing on “appearance”, “sound connotation” and “commercial impression”), and essentially bootstraps the merits of the opposition into its motion to dismiss argument. Opposer disagrees with applicant’s approach, and urges the Board to allow the opposition to continue based upon the allegations in opposer’s Notice of Opposition.

First, applicant has a difficult burden because the Board must take the allegations in the Notice of Opposition as true for purposes of applicant's motion. Further, the Board must view all factual inferences in a light most favorable to opposer. *Western Worldwide Enterprises Group, Inc. v. Qinqdao Brewery*, 17 USPQ2d 1137 (TTAB 1990); *Order of Sons of Italy in America v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221 (TTAB 1995).

Under the pertinent standard, the Board should deny applicant's motion. As described above, opposer is a senior user of INSPIRATION and has senior rights to INSPIRED. Applicant's goods identification is broad enough to pose a trademark problem with respect to opposer's trademark/service mark rights in INSPIRATION and INSPIRED. Opposer owns prior rights in its INSPIRATION and INSPIRED marks, and applicant's T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF mark is confusingly similar to opposer's marks. Under 15 U.S.C. § 1057(b), opposer INSPIRATION registrations are *prima facie* evidence that opposer owns its marks and has the right to use them in commerce. Those registrations also carry a presumption of damage from registration of a confusingly similar mark like applicant's.

Second, with respect to the merits, opposer's INSPIRATION mark is famous within its industry, and should be entitled to a broad scope of protection. Applicant's mark is similar to opposer's registered INSPIRATION mark and identical to opposer's INSPIRED mark (the latter being the subject of opposer's allowed U.S. Trademark Application Serial No. 76/075,247 for "computer software for use as a writing tool in education, home and business"). Applicant's goods are related to opposer's goods based upon the broadly worded goods identification present in applicant's published application. In addition, for purposes of

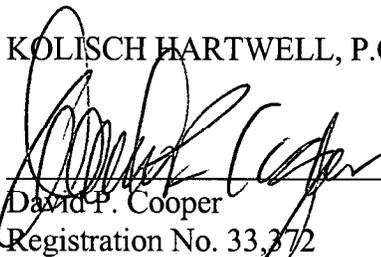
applicant's motion, that goods identification means applicant's goods are marketed similarly to opposer's since there is no market restriction in it.

Consistent with the notice pleading principle of the Federal Rules of Civil Procedure, as adopted by the Trademark Trial and Appeal Board, opposer has alleged facts sufficient to support this proceeding. Accordingly, the Board should deny applicant's motion to dismiss.

Dated: June 9, 2005.

Respectfully submitted,

KOLISCH HARTWELL, P.C.



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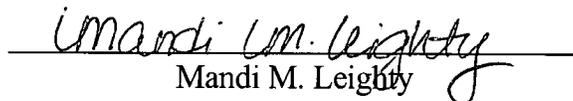
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CERTIFICATE OF MAILING

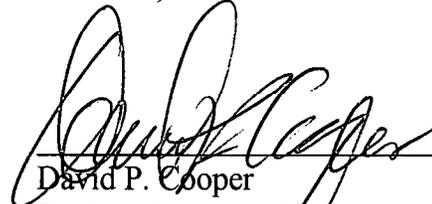
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Attn: Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on June 9, 2005.



Mandi M. Leighty

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO DISMISS was served on applicant, by service on its attorney, Jake A. Baccari and Kevin P. Jacobs of HomerBonner, located at 1200 Four Seasons Tower, 1441 Brickell Avenue, Miami, Florida 33131 by mailing same as first class mail, postage prepaid, to the aforementioned address on June 9, 2005.



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