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

Proceeding	91164083
Party	Defendant Teacher Inspired Practical Stuff, Inc. Teacher Inspired Practical Stuff, Inc. 2550 Royal Palm Way Weston, FL 33327
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Submission	Reply in Support of Motion
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Attachments	Reply in Further Support of Motion to Dismiss.pdf (3 pages)(34212 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
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INSPIRATION SOFTWARE, INC.)	
)	
Opposer,)	
)	Application Serial No. 76/541630
)	
v.)	Opposition No. 91164083
)	
TEACHER INSPIRED PRACTICAL)	
STUFF, INC.)	
)	
Applicant.)	
_____)	

APPLICANT’S REPLY IN FURTHER SUPPORT
OF MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT

Applicant Teacher Inspired Practical Stuff, Inc. (the “Applicant”) submits this reply in further support of its motion to dismiss or, alternatively, for summary judgment (the “Motion”) of the Notice of Opposition filed by Opposer Inspiration Software, Inc. (the “Opposer”) because Opposer has failed to submit evidence to rebut Applicant’s Motion, which shows that there is no genuine issue for trial.

Applicant’s Motion establishes that there is no genuine issue as to the likelihood of confusion between the Applicant’s mark and the Opposer’s mark. This Motion is supported by the Declaration of Maria Calamito-Proto. Based on personal knowledge, she declares that there is no likelihood of confusion between the Applicant’s mark and the Opposer’s mark because they are so patently dissimilar in appearance, sound connotation, and commercial impression.

In response to the Motion, the Opposer filed an Opposition to the Motion in which Opposer made bare allegations without any evidentiary support. In essence, Opposer restated the allegations made in the Notice of Opposition.

Pursuant to 37 C.F.R. §§ 2.116 and 2.127,¹ the Federal Rules of Civil Procedure are applicable to this case. Federal Rules of Civil Procedure 56(e) states that, when a motion for summary judgment is made and supported as provided in the rule, the nonmoving party may not rest upon the mere allegations or denials of their pleadings, but must set forth specific facts, by affidavit or otherwise, showing that there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-257 (1986). This is precisely what the Opposer, as the nonmoving party, has failed to do.

The party opposing summary judgment has the burden of showing sufficient evidence of a genuine issue of material fact in dispute. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). Although Opposer claims that genuine issues of material fact exist as to confusion among the marks, Opposer does not put forth any evidence supporting this allegation. Rather, Opposer simply rehashes the assertions outlined in the Notice of Opposition. This practice is explicitly proscribed by Federal Rules of Civil Procedure 56(e). As the record presently stands, the Opposer has produced no evidence to satisfy its burden and, therefore, there is no issue for trial.

The Applicant has sufficiently met the burden of showing there is no genuine issue for trial, based on the Motion and Declaration. The Opposer's response failed to provide any evidence to counter the Motion and thereby failed to show that a genuine issue in fact does exist. For these reasons, and those in the Motion, the Board should grant the Motion.

Dated: June 5, 2006.

¹ The alternative to filing a response to the Applicant's Motion would have been for the Opposer to file a motion under Federal Rules of Civil Procedure 56(f) stating that affidavit facts essential to justify the party's opposition were unavailable. Pursuant to 37 C.F.R. § 2.127(e)(1), this motion must have been filed within 30 days of the date of service of the summary judgment motion. Since Opposer failed to file such a motion and instead filed a response, Opposer is bound by its legally and factually deficient response.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by first class mail U.S. mail, postage prepaid, this 5th day of June 2006, upon:

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
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