

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

REGAL WARE, INC.,
Opposer,
v.
ADVANCED MARKETING INT'L., INC.,
Applicant.

Opposition No.: 91164280

Serial No. 76/574977

Mark: WHERE CRAFTSMEN
STILL CARE

Filing Date: February 10, 2004



03-25-2005

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #74

I HEREBY CERTIFY that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: BOX TTAB – NO FEE, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on the date set forth below.

[Signature]
Date of signature and of mail deposit

By: [Signature]
Lori T. Milvain

**APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO
NOTICE OF OPPOSITION**

Advanced Marketing Int'l., Inc. (hereinafter referred to as "Applicant"), by its undersigned counsel, responds as follows to the Notice of Opposition filed herein:

1. Applicant denies the allegations in Paragraph 1 of the Notice of Opposition.
2. Applicant denies the allegations in Paragraph 2 of the Notice of Opposition.
3. Applicant admits that Opposer's predecessor in interest filed an application to register the mark, WEST BEND... WHERE CRAFTSMEN STILL CARE

for the goods listed in that registration. Applicant denies the mark is registered on the Principal Register, and Applicant denies the remaining allegations of Paragraph 3 of the Notice of Opposition.

4. Applicant denies the allegations in Paragraph 4 of the Notice of Opposition.

5. Applicant denies the allegations in Paragraph 5 of the Notice of Opposition.

6. Applicant lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 6 of the Notice of Opposition, and therefore denies same.

7. Applicant denies the allegations in Paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations in Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations in Paragraph 9 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

First Affirmative Defense

There is no likelihood of confusion, mistake or deception because, inter alia, Applicant's mark is not confusingly similar to the pleaded mark of Opposer. Opposer's



... where craftsmen still care

pleaded mark, (the "WEST BEND Mark"), is different in overall sound, appearance, and impression from Applicant's word mark, WHERE CRAFTSMEN STILL CARE.

Second Affirmative Defense

The WEST BEND Mark is not registered on the Principal Register, and thus, is not entitled to any statutory presumption of validity.

Third Affirmative Defense

Opposer's WEST BEND Mark, Registration No. 862,553, is registered on the Supplemental Register, and Opposer has not alleged that this mark has acquired secondary meaning. Even if the WEST BEND Mark had acquired secondary meaning, the predominant feature of the WEST BEND Mark is "WEST BEND."

Fourth Affirmative Defense

Applicant objects to the Opposition filed by Opposer under the doctrine of acquiescence. Opposer misled the Applicant by Opposer's counsel's affirmative representation to counsel for Applicant on January 29, 2004 that the Applicant's use of WHERE CRAFTSMEN STILL CARE was permissible. Opposer was aware of Applicant's intended use even before that date and never objected to Applicant's use for over one year, causing undue prejudice to Applicant.

Fifth Affirmative Defense

Opposer's WEST BEND Mark was registered by The West Bend Company in 1968, and amended in 1978. Opposer allegedly acquired the WEST BEND Mark through a series of assignments, and abandoned the WEST BEND Mark through non-use, with no intention to resume use.

Sixth Affirmative Defense

In accordance with its lack of intention to resume use of the WEST BEND Mark, Opposer affirmatively consented to the use and registration of WHERE CRAFTSMEN STILL CARE by the Applicant. Through Opposer's avowed consent to Applicant's use, Opposer ratified the Applicant's course of conduct, by Opposer's confirmation of Applicant's right to the use of WHERE CRAFTSMEN STILL CARE.

Seventh Affirmative Defense

Applicant objects to the Opposition filed by Opposer under the doctrine of equitable estoppel. Opposer's counsel consented to Applicant's use and registration of WHERE CRAFTSMEN STILL CARE, by telephone voice-mail message, on January 29, 2004. Applicant detrimentally relied upon said consent by adopting, using, and applying for federal registration of WHERE CRAFTSMEN STILL CARE.

Sixth Affirmative Defense

According to the U.S. Patent and Trademark Office records, the current owner of the WEST BEND Mark is WB Acquisition, LLC, and not the Opposer herein, Regal Ware, Inc.

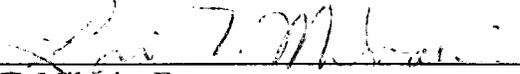
Seventh Affirmative Defense

According to the U.S. Patent and Trademark Office records, the registration of the WEST BEND Mark in International Class 21 for ALUMINUM AND STAINLESS STEEL COOKING UTENSILS-NAMELY, SAUCEPANS, DOUBLE BOILERS, CASSEROLES, SKILLETS, DUTCH OVENS, EGG POACHERS, GRIDDLES, BAKING PANS, COOKIE SHEETS, MIXING BOWLS, TEA KETTLES, PERCOLATORS, BROILERS, FRENCH FRYERS, OVENETTES, has expired.

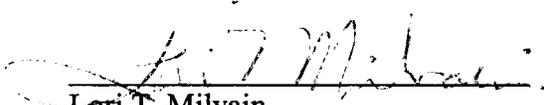
WHEREFORE, Applicant respectfully requests that this Opposition be dismissed, that judgment in favor of Applicant and against Opposer be entered, and that Applicant's mark be passed on to registration.

Advanced Marketing Int'l., Inc.

Dated: March 22, 2005


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I HEREBY CERTIFY that a true copy of the foregoing was served on Joseph A. Kromholz, Ryan Kromholz & Manion, S.C., P.O. Box 26618, Milwaukee, WI 53226 by U.S. Mail this 22nd day of March, 2005.


Lori T. Milvain