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

Proceeding	91164280
Party	Plaintiff REGAL WARE, INC ,
Correspondence Address	JOSEPH A. KROMGOLZ RYAN KROMHOLZ & MANION, S.C. P.O. BOX 26618 MILWAUKEE, WI 53226
Submission	Motion to Amend Pleading/Amended Pleading
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Date	04/28/2005
Attachments	050428 motion to amend.pdf (3 pages) 050428 AMENDED NOTICE OF OPPOSITION.pdf (6 pages) 050428 Certificate of Service for Motion to Amend.pdf (1 page)

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

8 Regal Ware, Inc. 9 Opposer 10 v. 11 Advanced Marketing Int'l, Inc. 12 Applicant	13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 Opposition No.:91164280 Atty. Docket No. :9513.18067-LIT
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14 **OPPOSER'S MOTION AND ARGUMENT**
15 **FOR AMENDMENT OF NOTICE OF OPPOSITION**

16 Regal Ware, Inc. (Opposer), by its attorneys, Ryan Kromholz & Manion, S.C. by Joseph A. Kromholz,
17 and Daniel R. Johnson, move pursuant to Federal Rule of Civil Procedure 15 and 37 CFR § 2.107 for
18 leave to amend the present Notice of Opposition by entry of the Amended Notice of Opposition
19 filed herewith. The bases for this motion are laid out as follows:

- 20 1. There are substantive additional grounds that have been added and two (2) clerical changes to
21 the present Amended Notice of Opposition.
- 22 2. The substantive changes are that the original application was made based upon a false
23 statement made under oath and that Applicant is estopped by virtue of its relationship with
24 Opposer from taking positions adverse to Opposer's ownership of the mark at issue.
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1 3. The clerical changes are:

2 a. There was a typographical error on page one of the original Notice of Opposition. The
3 trademark at issue was identified as WHERE CRAFTSMAN STILL CARE. It has
4 been properly amended to read WHERE CRAFTSMEN STILL CARE.

5
6 b. There was a clerical error in paragraph 3 of the original Notice of Opposition.
7 Opposer's mark, WEST BEND . . . WHERE CRAFTSMEN STILL CARE was
8 identified as being registered on the principal register instead of the supplemental
9 register. This has now been corrected in the present Amended Notice of Opposition.

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12 4. There are also substantive changes in that additional grounds for the opposition have been
13 added. Specifically, another trademark of the Opposer, identical to the mark applied for by
14 the Applicant has been added, a claim that the original application was made based upon a
15 false statement made under oath has been added, and a claim that the Applicant is estopped
16 by virtue of its relationship with Opposer from taking positions adverse to Opposer's
17 ownership of the mark at issue has been added.

18
19 5. No other changes to original Notice of Opposition have been made. No goods beyond those
20 originally identified have been added to the Opposition.

21
22 6. Discovery in the present case does not close until September of 2005. Should applicant
23 require additional interrogatories beyond the maximum allowed by rules Opposer will agree to
24 any reasonable request.

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11 Regal Ware, Inc.
12 Opposer

13 v.

14 Advanced Marketing Int'l, Inc.
15 Applicant

16 AMENDED NOTICE OF OPPOSITION

17 Opposition No. 91164280

18 Atty. Docket No. :9513.18067-LIT

19 Applicant: Advanced Marketing Int'l, Inc.

20 Address: 4129 United Avenue
21 Mt. Dora, Florida 32757

22 Trademark /Service Mark: WHERE CRAFTSMEN STILL CARE

23 Serial No: 76/574,977

24 Filed: February 10, 2004 Published: February 15, 2005

25 Goods/Services: Class 11 – Environmental Control Apparatus for Electric Rice Cookers;
26 Electric Slow Cookers

27 Class 21: - Housewares and Glass for Cookware, Namely Saucepans, Pots,
28 Skillets, Steamers, Dutch Ovens, Griddles and Cooking Utensils, Namely
Spatulas, Strainers, Ladles, Serving Tongs, Serving Forks, Serving Spoons,
and Mixing Spoons.

International Class: 11 and 21

1 NOTICE OF OPPOSITION

2 In the matter of an application for registration of an alleged trademark Opposer Regal
3 Ware, Inc., a Delaware corporation having a principal place of business at 1675 Reigle Drive,
4 Kewaskum, WI 53040, believes it will be damaged by registration of the above-referenced mark,
5 published in the *Official Gazette* on February 15, 2005, and by and through its attorneys, Ryan
6 Kromholz & Manion, S.C. hereby opposes the same on the following grounds:

- 7
- 8 1. Opposer is engaged in the manufacture, distribution, and sale in interstate commerce of
9 cookware, including, without limitation, Aluminum and Stainless Steel Cooking Utensils
10 and Electrical Cooking Utensils, in interstate commerce throughout the United States in
11 connection with the sale of Saucepans, Double Boilers, Casseroles, Skillets, Dutch Ovens,
12 Egg Poachers, Griddles, Baking Pans, Cooking Sheets, Mixing Bowls, Tea Kettles,
13 Percolators, Broilers, French Fryers, Ovenettes, Coffee Makers, Toasters, Skillets, Roasters,
14 Griddles, Bean Pot Sets, Patio Service Sets, Service Ranges and Corn Poppers.
 - 15
 - 16 2. Prior to the filing of Applicant's application, Opposer adopted, used, and is using the
17 trademark WHERE CRAFTSMAN STILL CARE for Aluminum and Stainless Steel
18 Cooking Utensils and Electrical Cooking Utensils, in interstate commerce throughout the
19 United States in connection with the sale of Saucepans, Double Boilers, Casseroles,
20 Skillets, Dutch Ovens, Egg Poachers, Griddles, Baking Pans, Cooking Sheets, Mixing
21 Bowls, Tea Kettles, Percolators, Broilers, French Fryers, Ovenettes, Coffee Makers,
22 Toasters, Skillets, Roasters, Griddles, Bean Pot Sets, Patio Service Sets, Service Ranges
23 and Corn Poppers.
 - 24
 - 25 3. Opposer manufactures and sells products bearing Opposer's WHERE CRAFTSMEN
26 STILL CARE trademark to Applicant.
 - 27
 - 28

- 1 4. Applicant purchases products bearing Opposer's WHERE CRAFTSMEN STILL CARE
2 trademark from Opposer.
3
- 4 5. Applicant sells the products that it purchases from Opposer bearing Opposer's WHERE
5 CRAFTSMEN STILL CARE trademark.
6
- 7 6. Prior to the filing of Applicant's application, Opposer adopted, used, and is using the
8 trademark WEST BEND ...WHERE CRAFTSMAN STILL CARE for Aluminum and
9 Stainless Steel Cooking Utensils and Electrical Cooking Utensils, in interstate commerce
10 throughout the United States in connection with the sale of Saucepans, Double Boilers,
11 Casseroles, Skillets, Dutch Ovens, Egg Poachers, Griddles, Baking Pans, Cooking Sheets,
12 Mixing Bowls, Tea Kettles, Percolators, Broilers, French Fryers, Ovenettes, Coffee Makers,
13 Toasters, Skillets, Roasters, Griddles, Bean Pot Sets, Patio Service Sets, Service Ranges
14 and Corn Poppers.
15
- 16 7. Prior to the filing date of Applicant's application, Opposer filed an application to register
17 the mark WEST BEND WHERE CRAFTSMEN STILL CARE for Aluminum and
18 Stainless Steel Cooking Utensils –Namely, Saucepans, Double Boilers, Casseroles, Skillets,
19 Dutch Ovens, Egg Poachers, Griddles, Baking Pans, Cooking Sheets, Mixing Bowls, Tea
20 Kettles, Percolators, Broilers, French Fryers, Ovenettes and Electrical Cooking Utensils
21 Namely, Coffee Makers, Toasters, Skillets, Roasters, Griddles, Bean Pot Sets, Patio Service
22 sets, Service Ranges, And Corn Poppers. Said mark being registered on the Supplemental
23 Register of the United States Patent and Trademark Office at Registration No. 862,553, on
24 December 24, 1968, a copy of which is attached hereto and incorporated by reference as
25 exhibit 1. The aforesaid registration is valid and subsisting, unrevoked and uncanceled,
26 and Opposer is the owner thereof and all of the business and goodwill represented thereby.
27
28

1 8. Opposer's use of the above trademark has been continuous from the date of first use recited
2 in its registration to the present time. On information and belief, Opposer's rights are prior
3 to those of Applicant.

4
5 9. Beginning with Opposer's adoption and use of the WEST BENDWHERE
6 CRAFTSMEN STILL CARE, Opposer has widely and extensively advertised and sold
7 goods bearing said WEST BENDWHERE CRAFTSMEN STILL CARE trademark. As
8 a result of same, the consuming public and trade have recognized and do recognize the
9 WEST BENDWHERE CRAFTSMEN STILL CARE trademark as being used by
10 Opposer or by a single source, and to associate and identify said mark and name with
11 Opposer or with a single source, and Opposer derives substantial goodwill and value from
12 the aforesaid identification by the consuming public.

13
14 10. Beginning with Opposer's adoption and use of the WHERE CRAFTSMEN STILL CARE,
15 Opposer has widely and extensively advertised and sold goods bearing said WHERE
16 CRAFTSMEN STILL CARE trademark. As a result of same, the consuming public and
17 trade have recognized and do recognize the WEST BENDWHERE CRAFTSMEN
18 STILL CARE trademark as being used by Opposer or by a single source, and to associate
19 and identify said mark and name with Opposer or with a single source, and Opposer derives
20 substantial goodwill and value from the aforesaid identification by the consuming public.

21
22 11. The trademarks of the parties are for use on similar goods.

23
24 12. Applicant, prior to filing its application for the trademark WHERE CRAFTSMEN STILL
25 CARE had actual knowledge of Opposer's WEST BENDWHERE CRAFTSMEN
26 STILL CARE trademark.

1 13. Applicant, prior to filing its application for the trademark WHERE CRAFTSMEN STILL
2 CARE had actual knowledge of Opposer's WHERE CRAFTSMEN STILL CARE
3 trademark.

4
5 14. Applicant, at the time of filing its application for the trademark WHERE CRAFTSMEN
6 STILL CARE filed an oath with the Patent and Trademark Office stating, among other
7 things, "to the best of his/her knowledge and belief no other person, firm, corporation, or
8 association has the right to use the mark in commerce, wither in the identical form thereof
9 or in such near resemblance thereto as to be likely when used, on or in connection with the
10 goods/services of such other person to cause confusion, or to cause mistake, or to deceive."

11
12 15. The Trademark Examining attorney for the United States Patent and Trademark Office
13 necessarily relied upon the aforesaid oath of the Applicant when reviewing the Applicant's
14 trademark application.

15
16 16. Applicant's trademark is confusingly similar to Opposer's WEST BENDWHERE
17 CRAFTSMEN STILL CARE trademark.

18
19 17. Applicant's trademark is confusingly similar to Opposer's WHERE CRAFTSMEN STILL
20 CARE trademark.

21
22 18. Applicant's mark is likely, when applied to Applicant's goods, to cause confusion and
23 mistake and to deceive, with resultant injury to Opposer, the consuming public, and the
24 trade.

1 19. Opposer will be damaged by Applicant's proposed registration, because such registration
2 will support and assist Applicant in the confusing and misleading use of Applicant's mark,
3 and will give color and exclusive statutory right to Applicant in violation and derogation of
4 Opposer's prior and superior rights.

5
6 20. Applicant committed fraud upon the Patent and Trademark Office by making materially
7 false statements under oath in its application.

8
9 21. Applicant, as a purchaser and re-seller of Opposer's product, bearing the Opposer's mark
10 WHERE CRAFTSMEN STILL CARE is estopped from taking any position adverse to
11 Opposer's ownership of said mark.

12
13 WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's mark and
14 respectfully requests that it not be allowed.

15
16 Respectfully submitted:

17 Date: April 28, 2005

Ryan Kromholz & Manion, S.C.

18
19 By: /Joseph A. Kromholz/

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13 v.)	
14 Advanced Marketing Int'l, Inc. 15 Applicant)	Atty. Docket No. :9513.18067-LIT

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that true copies of Opposer's Motion And Argument For Amendment Of Notice Of
18 Opposition and Amended Notice of Opposition have been serviced on the following attorney of
19 record by United States Mail Addressed as follows:

20 Lori T. Milvain, Esq.
21 Gronek & Latham, LLP
22 390 North Orange Avenue
23 Suite 600
24 Orlando, Florida 32801

25 this 28th day of April 2005.

26 /Joseph A. Kromholz/
27 Joseph A. Kromholz
28 Ryan Kromholz & Manion, S.C.
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