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

Proceeding	91164764
Party	Plaintiff Brink's Network, Incorporated
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Attachments	Opposer's Response to Applicant's Motion to Divide Application.pdf (3 pages) (89799 bytes)

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

BRINK'S NETWORK, INCORPORATED)
)
 Opposer)
)
 v.) Opposition No. 91164764
)
 THE BRINKMANN CORPORATION)
)
 Applicant)

OPPOSER'S RESPONSE TO APPLICANT'S
MOTION TO DIVIDE APPLICATION

I. INTRODUCTION

This matter is before the Board on Applicant's Motion to Divide Application, which was filed on August 27, 2009. Applicant seeks to divide Application No. 76/483,115 of the mark BRINKMANN (the "opposed application") into two applications.

According to Applicant, the first application seeks "to register the mark in connection with the goods in the eight classes applied for, including International Classes 4, 6, 7, 8, 11, 12, 21 and 30, as well as the unopposed goods in International Class 9," and the second application seeks "to register the mark in connection with the opposed goods in International Class 9." The opposed goods identified in Opposer's Second Amended Notice of Opposition and set forth in Applicant's Motion to Divide are as follows: "home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adaptors and wall mount brackets."

Opposer does not contest Applicant's Motion to Divide but reserves the right to object to any reliance by Applicant on the registration of the mark BRINKMANN in International Classes 4, 6, 7, 8, 11, 12, 21 and 30 and the unopposed goods in International Class 9, which issues as a result of the division.

In its decision rendered March 16, 2009, denying Applicant's motion for partial summary judgment to dismiss Opposer's dilution claim, the Board stated as follows:

"[W]e find unpersuasive applicant's argument that opposer cannot prevail on its dilution claim because it opposes registration of BRINKMANN for only some of applicant's identified goods. Applicant cites no case law in support of its position, no such requirement is imposed, and the USPTO treats each international class of goods or services in a multi-class application as a separate application."

Any attempt by Applicant to use the registration resulting from the division of Application No. 76/483115 as a defense to Opposer's dilution claim would be inappropriate based on the law of the case. Accordingly, Opposer reserves the right to object to any reliance by Applicant on the registration resulting from the division of Application No. 76/483115 based on the Board's decision of March 16, 2009, discussed above, or any other pertinent legal principle.

BRINK'S NETWORK, INCORPORATED

Date: September 9, 2009

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Opposer's Memorandum in Response to Applicant's Motion to Divide Application was served on the following counsel of record for Applicant by U.S. mail, first class postage prepaid, this 9th day of September, 2009:

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