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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 Brink's Network, Incorporated 203 Bancroft Building3411 Silverside Road Wilmington, DE 19810 UNITED STATES
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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BRINK'S NETWORK, INCORPORATED)	
)	
Opposer)	
)	
v.)	
)	Opposition No. 91164764
THE BRINKMANN CORPORATION)	
)	
Applicant)	

RESPONSE TO APPLICANT'S AMENDMENT

The above-captioned opposition proceeding against Application Serial No. 76/483,115 of the mark BRINKMANN was commenced on April 5, 2005. The opposition challenges registration of the mark BRINKMANN in connection with specific goods identified in International Class 9. Applicant filed its Answer to the Notice of Opposition on May 16, 2005.

Thereafter, on June 3, 2005, Applicant filed an amendment to the opposed application which revises the description of goods in Class 9 which is at issue in the subject opposition.¹ Applicant's proposed amendment materially alters the substance of the description of goods in Class 9. However, Applicant did not secure the consent of Opposer and the Trademark Trial and Appeal Board, or file the amendment pursuant to a motion granted by the Board, as required by the Trademark Rules of Practice.

¹ The amendment filed on June 3, 2005, changes the description of goods in several Classes listed in the opposed application in addition to the description of goods in Class 9. This response addresses the effect of the amendment on the particular goods at issue in Class 9 which are the subject of the instant opposition.

An application that is the subject of an opposition may not be amended in substance except with the consent of the other party and the approval of the Board, or except upon motion granted by the Board. See Rule 2.133 of the Trademark Rules of Practice; Trademark Trial and Appeal Board Manual of Procedure § 514.

According to Applicant, the proposed amendment substitutes semi-colons for commas, uses the plural form instead of singular form for certain goods, deletes redundant descriptions, corrects spelling, and orders the goods in a more logical pattern. Applicant characterizes the amendment as one which “clarifies” the original description. With respect to the description of goods in Class 9 which is the subject of the instant opposition, Applicant’s amendment substitutes a semi-colon in place of a comma, which alters the meaning and substance of “home security systems and components therefor.”

The original description of goods in Class 9 in the opposed application, which is at issue in the subject opposition, reads as follows:

“Home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets, batteries, wall mount brackets for battery chargers and flashlight, cooking thermometers.”

Applicant’s amendment substitutes a semi-colon for a comma after the word “brackets” with the result that the words “batteries, wall mount brackets for battery chargers and flashlight, cooking thermometers” are no longer part of the definition of “home security systems and components therefor,” although these items are still included in the overall description of goods in Class 9. The substitution of a semi-colon for a comma thus alters the substance and meaning of “home security systems and components therefor” in the description of goods. Accordingly, under Rule 2.133, Applicant could not unilaterally amend the application, but rather must either secure Opposer’s consent and the Board’s

approval or file a motion to amend the application. Applicant did not follow either procedural alternative for amending the opposed application.

Although Applicant did not follow proper procedure, Opposer does not object to the proposed amendment with respect to the goods in Class 9 at issue in the subject opposition. Accordingly, upon entry of the proposed amendment with respect to the goods in Class 9, Opposer requests that the definition of "home security systems and components therefor" as set forth in ¶ 1 and subsequent paragraphs in the Notice of Opposition be deemed to read "home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets," which is consistent with the amendment filed by Applicant. Given Applicant's failure to comply with Rule 2.133, it is believed that Opposer should not be put to the expense of filing a motion for leave to file an Amended Notice of Opposition.

BRINK'S NETWORK, INCORPORATED

Dated: June 16, 2005

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Certificate of Service

I hereby certify that a true copy of Response to Applicant's Amendment was served upon the following counsel of record for Applicant by depositing the same in the U.S. Mail, first class mail postage prepaid, this 16th day of May, 2005:

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