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

Proceeding	91164764
Party	Defendant The Brinkmann Corporation
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BRINK'S NETWORK, INCORPORATED,

Opposer,

v.

THE BRINKMANN CORPORATION,

Applicant.

Opposition No. 91164764

**APPLICANT BRINKMANN'S OPPOSITION TO OPPOSER'S
MOTION TO EXTEND TESTIMONY PERIODS**

Opposer Brink's Network, Incorporated ("Brink's Network") has brought a motion to extend the opening of the parties' testimony periods ("Motion") pending the disposition of Opposer's pending motion for leave to file a third amended notice of opposition to assert three additional trademark registrations against Applicant The Brinkmann Corporation ("Brinkmann"). Opposer's Motion should be denied as unnecessary because the Board should deny Opposer's underlying motion for leave to file a third amended notice of opposition.

**I.
STATEMENT OF FACTS**

Opposer filed its Notice of Opposition on April 1, 2005, over five years ago.

On April 30, 2009, Opposer filed a motion for leave to file a first amended Notice of Opposition. The first amended Notice of Opposition asserted the following grounds for opposition of Applicant Brinkmann's application: (1) likelihood of confusion under section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) with various marks incorporating BRINK'S;

(2) dilution under section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c), of various marks incorporating BRINK'S; (3) misuse of the federal registration symbol; and (4) fraudulent misrepresentation of material fact.

On May 13, 2009, Opposer filed a motion for leave to file a second amended Notice of Opposition, which asserted the same grounds for opposition as the first amended Notice of Opposition, but deleted two of Opposer's registrations on the ground that the marks were no longer in use in commerce.

On August 7, 2009, the Board, deciding both of Opposer's motions concurrently, granted Opposer's motion for leave to file a second amended Notice of Opposition, but struck Opposer's fraud claim from the notice of opposition because the Board found that the claim was legally insufficient and futile.

On June 4, 2010, Opposer filed the underlying motion for leave to file a third amended Notice of Opposition, which seeks to (1) delete the fraudulent misrepresentation of material fact claim (notwithstanding the fact that the Board already struck it from the second amended Notice of Opposition), (2) update the Notice of Opposition to reflect the recent change of name of one of Opposer's related companies, and (3) assert three additional trademark registrations against Applicant Brinkmann. Opposer's motion further requests that the Board extend the discovery cut-off by sixty (60) days from the date of the Board's order granting or denying Opposer's motion, in order to avoid any claim of prejudice by Applicant Brinkmann resulting from the granting of Opposer's Motion. Applicant has joined in that request.

The first trademark registration that Opposer seeks to add to the third amended Notice of Opposition is Registration No. 2,330,884 for the mark BRINKS HOME SECURITY & Design, which registered on March 21, 2000. The second trademark registration that Opposer

seeks to add to the third amended Notice of Opposition is Registration No. 2,582,146 for the mark BRINKS, which registered on June 18, 2002. The third trademark registration that Opposer seeks to add to the third amended Notice of Opposition is Registration No. 3,548,670 for the mark BRINKS & Design, which registered on December 23, 2008.

On July 16, 2010, Opposer Brink's Network filed the present motion to extend the testimony periods, stating that Opposer should not have to commence its testimony period without knowing whether or not the third amended notice of opposition will be accepted by the Board.

II.

DISCUSSION

A. Opposer's Motion Should Be Denied Because Opposer's Underlying Motion for Leave to File a Third Amended Notice of Opposition Should Be Denied

As previously set forth in Applicant Brinkmann's opposition to Opposer's motion for leave to amend, Applicant Brinkmann objects to Opposer's attempt to assert three additional trademark registrations against Applicant. The first registration that Opposer seeks to add was registered in 2000, five years before Opposer filed the original Notice of Opposition. The second registration that Opposer seeks to add was registered in 2002, three years before Opposer filed the original Notice of Opposition. The third trademark registration that Opposer seeks to add was registered in 2008, well before Opposer filed its motions to file a first and second amended Notice of Opposition in 2009. Opposer has no excuse for its undue delay in bringing up these registrations when it has been aware of these registrations for years, and Opposer offered absolutely no explanation at all for its dilatory conduct in doing so.

Opposer states that it has the right to know what claims, defenses or counterclaims will be presented at trial in light of the uncertainty of whether Opposer's motion for leave to file a third amended notice of opposition will be granted or not. Yet, Opposer

ignores that it created the very uncertainty about which it now frets. If there is uncertainty, it is the direct result of *Opposer's own failure* to plead the three additional registrations in a timely manner. Opposer had years and ample opportunity to plead those registrations, but failed to even try until the eleventh hour. Opposer should not benefit from its dilatory conduct. The Board should deny Opposer's underlying motion for leave to amend, in which event Opposer Brink's Network already knows what claims, defenses and counterclaims are present in the proceeding.

B. If Opposer's Underlying Motion is Granted, Applicant Assumes the Board Will Extend Dates in the Proceeding

Applicant Brinkmann opposes both Opposer's motion for leave to file a third amended notice of opposition and the current Motion to extend testimony periods. If the Board denies Opposer's motion for leave to amend, then no extension of the testimony periods is necessary. If the Board grants Opposer's motion for leave to amend, Applicant Brinkmann has previously joined in Opposer's request to extend the dates, to alleviate any undue prejudice to Applicant Brinkmann.

III.

CONCLUSION

For all the reasons stated herein, Applicant Brinkmann respectfully requests that the Board deny Opposer's motion to extend the testimony periods.

Dated: August 4, 2010



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CERTIFICATE OF SERVICE

This is to certify that I have this day, August 4, 2010, caused to be served a copy of the foregoing "Applicant Brinkmann's Opposition to Opposer's Motion to Extend Testimony Periods" by placing a copy in the United States Mail, postage pre-paid, addressed as follows: Alan S. Cooper, counsel for Opposer, at Howrey LLP, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004.



Susan Hwang