

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451**

Mailed: November 18, 2010

Opposition No. 91164764

Brink's Network, Incorporated

v.

The Brinkmann Corporation

Jennifer Krisp, Interlocutory Attorney:

This proceeding is before the Board for consideration of 1) opposer's motion (filed June 4, 2010) for leave to file a third amended notice of opposition, and 2) opposer's motion (filed July 16, 2010) to extend testimony periods. The motions have been fully briefed.<sup>1</sup>

The Board may, upon its initiative, resolve a motion filed in an inter partes proceeding by telephone conference. See Trademark Rule 2.120(i)(1); TBMP § 502.06(a) (2d ed. rev. 2004). On November 17, 2010, the Board convened a telephone conference to resolve the issues presented in the motions. Participating were opposer's

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<sup>1</sup> Applicant's brief, filed July 30, 2010, is an impermissible surreply to opposer's motion for leave to amend, and has been given no consideration.

The Board notes applicant's uncontested motion (filed August 26, 2010) to amend the subject application in view of the granting of its motion to divide said application and to create a separate application ("child application" 76979024) for the unopposed classes and goods. Applicant concurrently filed an executed declaration in support of its amendment. Accordingly, the amendment is approved. See Trademark Rule 2.133(a).

counsel Alan S. Cooper, Esq., applicant's counsel Gary A. Clark, Esq., and the assigned Interlocutory Attorney.

Motion for leave to amend

Opposer seeks leave to amend its pleading to: 1) delete its fraud claim pursuant to the Board's August 7, 2009 order; 2) update and clarify certain paragraphs to reflect the name of one of its related companies; and 3) add a pleading of ownership of Registration Nos. 2585259, 2582146 and 3548670. Applicant does not object to the first two amendments; applicant objects to opposer's motion insofar as it seeks leave to plead Registration Nos. 2585259, 2582146 and 3548670.

A full recitation of the parties' arguments is unnecessary; therefore, the parties' arguments are not detailed herein.

Amendments to pleadings in inter partes proceedings are governed by Fed. R. Civ. P. 15, made applicable to Board proceedings by operation of Trademark Rule 2.116(a). Subsequent to 21 days after service of a responsive pleading, a party may amend its pleading only with the opposing party's written consent or the Board's leave. Fed. R. Civ. P. 15(a)(2). The Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties. See TBMP §§ 507.01 and 507.02 (2d ed. rev. 2004). Where the moving party seeks to add a new claim or defense, and the

proposed pleading thereof is legally insufficient, or would serve no useful purpose, the Board normally will deny the motion for leave to amend. See *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1785 (Fed. Cir. 1990).

Applicant's argument that opposer, in its brief on the motion, offers little explanation for its delay in pleading the registrations, two of which issued in 2000 and 2002, respectively (Registration Nos. 2330884 and 2582146), years prior to the commencement of this proceeding, and one of which registered in 2008 (Registration No. 3548670), is well-taken. Upon filing its motion, opposer was unquestionably aware of the delay in seeking to amend, and aware of ample precedent indicating a party's need to provide an explanation for such a delay. Opposer's reply brief provides its explanation of the reasons for the delay, including references to events which occurred subsequent to the filing of its motion. During the conference, counsel for opposer stated, inter alia, that said events surrounding opposer's corporate structure gave rise to a greater desire to rely on opposer's marks that are specifically registered for security related products.

Regarding the timing of opposer's motion, opposer sought leave to amend late in this proceeding, namely, one month before the close of discovery, as reset. Regarding undue prejudice to applicant, an issue that is inherently related to the timing of opposer's motion, applicant, in its brief in opposition, provides little detail, asserting that it "will be

unduly prejudiced if Opposer is allowed to drag the proceeding out further." During the conference, counsel for applicant articulated that applicant may be prejudiced by having to conduct further discovery, to depose or re-depose certain individuals, and to re-explore the strength of opposer's case in view of the additional goods on which opposer seeks to rely.

In view of the statutory grounds that opposer has asserted, the Board's consideration of opposer's claim of ownership of Registration Nos. 2585259, 2582146 and 3548670 is apt to serve the useful purpose of aiding the Board in ascertaining the full merits of this case at trial. The opposed goods are "home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets" in International Class 9. Opposer initially pleaded ownership of various marks for, or including, the term BRINKS, and now seeks to add a pleading of three registrations for the mark BRINKS, two of which cover "keyed and combination metal locks, and hasps" in International Class 6, and one of which covers "timers" in International Class 9. Finally, the proposed amendment does not add a claim, and does not violate settled law.

Having thoroughly considered the parties' arguments, the Board finds, on balance, that opposer has demonstrated that it is entitled to the Board's leave to file its proposed amended pleading. In view thereof, opposer's motion is granted. The



Rebuttal testimony period for  
plaintiff in the  
counterclaim to close: 10/3/2011

**Briefs shall be due as follows:**  
**[See Trademark rule 2.128(a)(2)]**

Brief for plaintiff in the opposition  
shall be due: 12/2/2011

Brief for defendant in the opposition  
and as  
plaintiff in the counterclaim shall  
be due: 1/1/2012

Brief for defendant in the  
counterclaim and its reply  
brief (if any) as plaintiff in the  
opposition shall be due:  
1/31/2012

Reply brief (if any) for plaintiff in  
the counterclaim shall be due:  
2/15/2012

In each instance, a copy of the transcript of  
testimony, together with copies of documentary exhibits,  
must be served on the adverse party within thirty days after  
completion of the taking of testimony. Trademark Rule  
2.125.

Briefs shall be filed in accordance with Trademark Rules  
2.128(a) and (b). An oral hearing will be set only upon  
request filed as provided by Trademark Rule 2.129.