

ESTTA Tracking number: **ESTTA384773**

Filing date: **12/20/2010**

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

Proceeding	91164764
Party	Defendant The Brinkmann Corporation
Correspondence Address	GARY A. CLARK, ESQ. SHEPPARD, MULLIN, RICHTER & HAMPTON LLP 333 SOUTH HOPE STREET, 48TH FLOOR LOS ANGELES, CA 90071 UNITED STATES gclark@sheppardmullin.com, shwang@sheppardmullin.com
Submission	Answer and Counterclaim
Filer's Name	Susan Hwang
Filer's e-mail	shwang@sheppardmullin.com
Signature	/Susan Hwang/
Date	12/20/2010
Attachments	Answer to Third Amended Notice of Opposition.pdf (13 pages)(2312073 bytes)

Registrations Subject to the filing

Registration No	529622	Registration date	08/22/1950
Registrant	BRINK'S NETWORK, INC. 203 BANKCROFT BUILDING 3411 SILVERSIDE ROAD WILMINGTON, DE 19810 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

Goods/Services Subject to the filing

<p>Class U101 (International Class 035, 036, 038, 041, 042). First Use: 1912/01/01 First Use In Commerce: 1912/01/01 All goods and services in the class are requested, namely: RECEIVING CHECKS, CASHING THE SAME, [MAKING UP PAYROLLS,] CARRYING SAME OR OTHER MONEYS OR SECURITIES, GUARDING AND PROTECTING SAME [AND PAYING PAYROLLS, HANDLING CLEARINGS, SELLING TICKETS, HANDLING PROCEEDS FROM CONVENTIONS, EXHIBITIONS, AND PERFORMANCES, REPAIRING SAFES, CHESTS, CASH PROTECTORS, AND SIMILAR EQUIPMENT]</p>
--

Registration No	1412587	Registration date	10/07/1986
Registrant	BRINK'S NETWORK, INCORPORATED 3411 Silverside Road 203 Bancroft Building WILMINGTON, DE 19810 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

Goods/Services Subject to the filing

<p>Class 035. First Use: 1984/04/00 First Use In Commerce: 1984/04/00 All goods and services in the class are requested, namely: SECURITY ALARM AND MONITORING SYSTEM SERVICES</p>
--

Registration No	1411610	Registration date	09/30/1986
Registrant	BRINK'S NETWORK, INCORPORATED 3411 Silverside Road 203 Bancroft Building WILMINGTON, DE 19810 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

Goods/Services Subject to the filing

Class 035. First Use: 1983/11/00 First Use In Commerce: 1983/11/00
All goods and services in the class are requested, namely: SECURITY ALARM AND MONITORING
SYSTEM SERVICES

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 ANSWER TO OPPOSER'S
THIRD AMENDED NOTICE OF OPPOSITION,
AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

ANSWER

For its Answer to the Third Amended Notice of Opposition by Opposer, Brink's Network, Incorporated ("Brink's Network"), Applicant, The Brinkmann Corporation, a corporation organized and existing under the laws of the State of Texas, having a place of business at 4215 McEwen Road, Dallas, Texas 75244 ("Brinkmann"), by and through its attorneys, admits, denies and avers as follows:

Background

1. In response to paragraph 1 of the Third Amended Notice of Opposition, Applicant Brinkmann admits that it has applied to register BRINKMANN for a variety of goods including but not limited to, home security systems and components therefor, namely, motion

sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets, in International Class 9.

2. In response to paragraph 2 of the Third Amended Notice of Opposition, Applicant Brinkmann admits that trademark application Serial No. 76/483,115 was filed on January 17, 2003, but denies Opposer Brink's Network's allegation that the application claims use of the mark BRINKMANN in connection with home security systems and components on June 12, 1978.

3. In response to paragraph 3 of the Third Amended Notice of Opposition, Applicant Brinkmann denies that trademark application Serial No. 76/483,115 claims use of the mark BRINKMANN in connection with its home security systems and components on June 12, 1978, but admits that such date is not applicable to its home security systems and components.

4. In response to paragraph 4 of the Third Amended Notice of Opposition, Applicant Brinkmann denies that Opposer Brink's Network's related companies Brink's Home Security Inc. and Brink's, Incorporated are still using the trade name, trademark and service mark BRINK'S, alone and/or in combination with other words and design(s), in interstate commerce for commercial and residential security systems and equipment; and/or residential and commercial security alarm and monitoring services. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 4 of the Third Amended Notice of Opposition and, on that basis, denies each and every such remaining averment.

5. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 5 of the Third Amended Notice of Opposition and, on that basis, denies each and every such averment.

6. In response to paragraph 6 of the Third Amended Notice of Opposition, Applicant Brinkmann denies that Opposer Brink's Network is the owner of the trade name, trademark and service mark BRINK'S's *in rem*, without regard to the nature of the business, goods or services with which the name or mark is used, and further denies that Opposer and its predecessor and related companies have continuously used the trade name and mark for commercial and residential security systems and related residential and commercial security alarm and monitoring services. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 6 of the Third Amended Notice of Opposition and, on that basis, denies each and every such remaining averment.

7. Applicant Brinkmann denies the averments of paragraph 7 of the Third Amended Notice of Opposition.

8. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 8 of the Third Amended Notice of Opposition and, on that basis, denies each and every such averment.

9. In response to paragraph 9 of the Third Amended Notice of Opposition, Applicant Brinkmann denies that there has been continuous advertising and sales of commercial and residential security systems and related services under the mark BRINK'S. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 9 of the Third Amended Notice of Opposition and, on that basis, denies each and every such remaining averment.

10. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 10 of the Third Amended Notice of Opposition and, on that basis, denies each and every such averment.

11. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 11 of the Third Amended Notice of Opposition and, on that basis, denies each and every such averment.

12. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 12 of the Third Amended Notice of Opposition and, on that basis, denies each and every such averment.

13. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 13 of the Third Amended Notice of Opposition and, on that basis, denies each and every such averment.

14. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 14 of the Third Amended Notice of Opposition and, on that basis, denies each and every such averment.

15. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 15 of the Third Amended Notice of Opposition and, on that basis, denies each and every such averment.

16. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 16 of the Third Amended Notice of Opposition and, on that basis, denies each and every such averment.

17. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 17 of the Third Amended Notice of Opposition and, on that basis, denies each and every such averment.

18. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 18 of the Third Amended Notice of Opposition and, on that basis, denies each and every such averment.

19. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 19 of the Third Amended Notice of Opposition and, on that basis, denies each and every such averment.

20. In response to paragraph 20 of the Third Amended Notice of Opposition, Applicant Brinkmann denies that Registration Nos. 529,622, 1,412,587 and 1,411,610 are conclusive evidence of Opposer Brink's Network's exclusive right to use the marks shown therein in commerce for security alarm and monitoring system services. Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 20 of the Third Amended Notice of Opposition and, on that basis, denies each and every such remaining averment.

Opposition Based on Likelihood of Confusion Pursuant to § 2(d)

21. In response to paragraph 21 of the Third Amended Notice of Opposition, Applicant Brinkmann denies that all of the services recited in Opposer's Registration Nos. 1,313,790, 529,622, 1,309,375, 1,412,586, 1,411,610 and 2,330,884 can be described as "commercial and residential security systems and equipment, and related residential and commercial security alarm and monitoring services" and that "purchasers, prospective purchasers and others are likely to be confused, mistaken or deceived into the belief, contrary to fact, that Applicant's home security systems and components therefor sold under the mark

BRINKMANN emanate from and/or are in some way sponsored or approved by Opposer and/or that Applicant is somehow affiliated with Opposer, thereby damaging Opposer.” Applicant Brinkmann is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 21 of the Third Amended Notice of Opposition and, on that basis, denies each and every such remaining averment.

22. Applicant Brinkmann denies the averments of paragraph 22 of the Third Amended Notice of Opposition.

Opposition Based on Likelihood of Confusion Pursuant to § 13(a)

23. Applicant Brinkmann denies the averments of paragraph 23 of the Third Amended Notice of Opposition.

Opposition Based on Misuse of Registration Symbol

24. In response to paragraph 24 of the Third Amended Notice of Opposition, Applicant Brinkmann admits that Exhibit A appears to be a copy of a specimen for International Class 9, submitted by Applicant Brinkmann in connection with application Serial No. 76/483,115.

25. Applicant Brinkmann denies the averments of paragraph 25 of the Third Amended Notice of Opposition.

26. Applicant Brinkmann denies the averments of paragraph 26 of the Third Amended Notice of Opposition.

AFFIRMATIVE DEFENSES

27. Opposer Brink’s Network is precluded by the doctrine of abandonment from opposing Applicant Brinkmann’s U.S. trademark application serial No. 76/483,115 based on alleged use by Opposer’s related companies of the trade name, trademark and service mark BRINK’S, alone and/or in combination with other words and design(s), in interstate commerce

for commercial and residential security systems and equipment; and/or residential and commercial security alarm and monitoring services, or based on Opposer's Registration Nos. 529,622, 1,412,587 and/or 1,411,610.

28. Opposer Brink's Network is precluded by the doctrine of prior registration based on Applicant Brinkmann's Registration No. 1,153,730 issued on May 12, 1981 for the mark BRINKMANN (stylized), Applicant Brinkmann's Registration No. 2,779,986 issued on November 4, 2003 for the mark BRINKMANN BACKYARD KITCHEN, Applicant Brinkmann's Registration No. 3,797,964 issued on June 8, 2010 and third-party prior registrations of the marks BRINK, BRINK'S or BRINKMANN, alone and/or in combination with other words and design(s), from opposing Applicant Brinkmann's U.S. trademark application serial No. 76/483,115 on the basis of dilution under section 43(c) of the Lanham Act. The third-party prior registrations of the marks BRINK, BRINK'S or BRINKMANN, alone and/or in combination with other words and design(s) include but are not limited to:

Mark	Reg. No.	Reg. Date
BRINKLEY	3,819,888	July 13, 2010
BRINKSTER	3,777,594	April 20, 2010
THINK BRINK	3,678,261	September 8, 2009
BRINK INDUSTRIES	3,670,479	August 18, 2009
BRINK THINKING	3,655,734	July 14, 2009
BRINKER BAROMETER	3,638,678	June 16, 2009
COUPLES ON THE BRINK	3,523,665	October 28, 2008

Mark	Reg. No.	Reg. Date
TENBRINK	3,505,979	September 23, 2008
BRINKLEY BOOKS	3,455,959	June 24, 2008
BRINK'S BODY BUILDING REVEALED	3,440,166	June 3, 2008
HANS BRINKER & Design	3,380,512	February 12, 2008
BRINK	3,365,045	January 8, 2008
BRINKER CAPITAL	2,842,231	May 18, 2004
BRINKMANN	2,671,114	January 7, 2003
R. BRINKLEY SMITHERS AWARD	2,963,004	June 21, 2005
BRINK'S PLACE	2,749,447	August 12, 2003
R. BRINKLEY SMITHERS INSTITUTE	2,883,526	September 14, 2004
VANDENBRINK	2,849,847	June 1, 2004
BRINKS & Design	2,528,960	January 15, 2002
BRINK & COTTON	2,297,951	December 7, 1999
THE BRINK & Design	2,140,043	March 3, 1998
BRINKMANN PUMPS	2,217,974	January 12, 1999
BRINKS HOFER GILSON & LIONE & Design	2,162,189	June 2, 1998
BRINKMANN CHEMSAVER	2,154,978	May 5, 1998

Mark	Reg. No.	Reg. Date
BRINK & Design	1,963,895	March 26, 1996
BRINKER INTERNATIONAL & Design	1,690,466	June 2, 1992
BRINKER INTERNATIONAL	1,724,412	October 13, 1992
BRINK	1,713,973	September 8, 1992
BRINK AND COTTON	1,554,418	September 5, 1989
B BRINKHAUS & Design	1,305,923	November 20, 1984
BRINK	981,617	April 2, 1974
BRINK	765,884	March 3, 1964
BRINK	741,617	December 4, 1962

29. Opposer Brink's Network is precluded by the doctrine of unclean hands from opposing Applicant Brinkmann's U.S. trademark application serial No. 76/483,115 on the basis of misuse of the federal registration symbol.

30. Applicant Brinkmann hereby reserves all rights to assert additional defenses, should Applicant Brinkmann learn of grounds for such defenses during the course of this proceeding.

COUNTERCLAIMS

31. Applicant Brinkmann hereby counterclaims to cancel Opposer's pleaded Registration Nos. 529,622, 1,412,587 and 1,411,610 pursuant to 37 C.F.R. § 2.106(b)(2)(i). As grounds in support of these counterclaims, Applicant Brinkmann alleges as follows:

Counterclaim for Cancellation of Registration No. 529,622

32. Opposer Brink's Network asserts ownership of Registration No. 529,622 for the mark BRINK'S (stylized) for "Receiving checks, cashing the same, making up payrolls, carrying same or other moneys or securities, guarding and protecting same and paying payrolls, handling clearings, selling tickets, handling proceeds from conventions, exhibitions, and performances, repairing safes, chests, cash protectors, and similar equipment," registered on August 22, 1950.

33. On information and belief, Opposer Brink's Network has discontinued use of the mark shown in Registration No. 529,622 for all of the recited services, with intent not to resume use of the mark for the recited services.

34. As a result of Opposer Brink's Network's discontinuance of use of the mark shown in Registration No. 529,622 for all of the recited services, with intent not to resume use of the mark for the recited services, the mark has become abandoned for purposes of § 45 of the Federal Trademark Act.

35. Opposer Brink's Network has opposed Applicant's trademark application Serial No. 76/483,115 based on Registration No. 529,622.

36. Applicant, therefore, is likely to be damaged by the continued registration of Registration No. 529,622.

Counterclaim for Cancellation of Registration No. 1,412,587

37. Opposer Brink's Network asserts ownership of Registration No. 1,412,587 for the mark BRINK'S HOME SECURITY for "Security alarm and monitoring system services," registered on October 7, 1986.

38. On information and belief, Opposer Brink's Network has discontinued use of the mark shown in Registration No. 1,412,587 for all of the recited services, with intent not to resume use of the mark for the recited services.

39. As a result of Opposer Brink's Network's discontinuance of use of the mark shown in Registration No. 1,412,587 for all of the recited services, with intent not to resume use of the mark for the recited services, the mark has become abandoned for purposes of § 45 of the Federal Trademark Act.

40. Opposer Brink's Network has opposed Applicant's trademark application Serial No. 76/483,115 based on Registration No. 1,412,587.

41. Applicant, therefore, is likely to be damaged by the continued registration of Registration No. 1,412,587.

Counterclaim for Cancellation of Registration No. 1,411,610

42. Opposer Brink's Network asserts ownership of Registration No. 1,411,610 for the mark BRINK'S & Design for "Security alarm and monitoring system services," registered on September 30, 1986.

43. On information and belief, Opposer Brink's Network has discontinued use of the mark shown in Registration No. 1,411,610 for all of the recited services since at least as early as 2008, with intent not to resume use of the mark for the recited services.

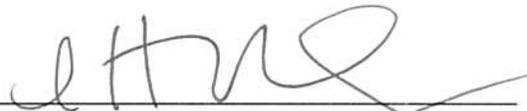
44. As a result of Opposer Brink's Network's discontinuance of use of the mark shown in Registration No. 1,411,610 for all of the recited services, with intent not to resume use of the mark for the recited services, the mark has become abandoned for purposes of § 45 of the Federal Trademark Act.

45. Opposer Brink's Network has opposed Applicant's trademark application Serial No. 76/483,115 based on Registration No. 1,411,610.

46. Applicant, therefore, is likely to be damaged by the continued registration of Registration No. 1,411,610.

WHEREFORE, Applicant Brinkmann prays that Opposer Brink's Network take nothing by its Third Amended Notice of Opposition and that the same be denied and dismissed with prejudice, and that Applicant's counterclaims for cancellation be granted with respect to Opposer's Registration Nos. 529,622, 1,412,587 and 1,411,610. The Commissioner is authorized to charge Deposit Account No. 19-1853 in the amount of \$900, and any additional required fees, for the counterclaims for cancellation.

Dated: December 20, 2010



Gary A. Clark, Esq.
Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071
Tel.: (213) 620-1780
Fax: (213) 620-1398

Attorneys for Applicant
THE BRINKMANN CORPORATION

CERTIFICATE OF SERVICE

This is to certify that I have this day, December 20, 2010, caused to be served a copy of the foregoing "Applicant Brinkmann's Answer to Opposer's Third Amended Notice of Opposition, Affirmative Defenses and Counterclaims" 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