

ESTTA Tracking number: **ESTTA386767**

Filing date: **01/05/2011**

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	Motion for Summary Judgment Dismissing Applicant's Prior Registration Defense.pdf ( 6 pages )(214492 bytes ) Memo in Support of Opposer's Motion for Summary Judgment Dismissing Applicant's Prior Reg. Defense.pdf ( 18 pages )(1019917 bytes ) Dec. of D'Andrea in Support of Opp's Motion for Summary Judgment Dismissing App's Prior Reg. Defense.pdf ( 43 pages )(2261157 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  
 )  
 BRINKMANN CORPORATION )  
 )  
 ) Applicant )

MOTION FOR SUMMARY  
JUDGMENT DISMISSING APPLICANT'S  
PRIOR REGISTRATION DEFENSE

Opposer Brink's Network, Incorporated, in accordance with Rule 56 Fed. R. Civ. P. and Rule 2.127 of the Trademark Rules of Practice, respectfully moves for summary judgment dismissing the prior registration affirmative defense asserted in ¶ 28 of the Answer, Affirmative Defenses and Counterclaims filed by Applicant Brinkmann Corporation on December 20, 2010 (hereinafter "Answer").

As grounds for this motion, Opposer states as follows:

- (1) Applicant filed Application Serial No. 76/483,115 seeking to register the mark BRINKMANN, which is the subject of the above-captioned opposition proceeding (hereinafter the "opposed application"), on January 17, 2003.
- (2) Opposer's opposition to Application Serial No. 76/483,115 is directed to Applicant's effort to register the mark BRINKMANN for home security systems and components therefor, namely, motion

sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets in International Class 9 (hereinafter “home security systems and components therefor”).

- (3) In ¶ 28 of its Answer, Applicant pleads the prior registration affirmative defense based on the proposition that the present opposition is precluded by:
  - (a) Opposer’s failure to contest Applicant’s right to register the marks BRINKMANN (Stylized), BRINKMAN BACKYARD KITCHEN and BRINKMANN for the goods described in Registration Nos. 1,152,730, 2,779,986 and 3,797,964, respectively; and
  - (b) Opposer’s failure to contest the right of a number of third parties to register the marks listed in ¶ 28 of Applicant’s Answer.
- (4) The “prior registration” defense is based on the principle established in the landmark case of *Morehouse Mfg. Corp. v. J. Strickland & Co.*, 407 F.2d 881, 160 USPQ 715 (CCPA 1969), that an opposer cannot be “damaged” within the meaning of § 13 of the Federal Trademark Act by registration of a mark for particular goods or services if the applicant owns an existing registration for the same or substantially identical mark for the same or substantially identical goods.

- (5) To the extent that Applicant predicates its prior registration defense on its ownership of Registration Nos. 1,152,739 and 2,779,986 of the marks BRINKMANN (Stylized) and BRINKMAN BACKYARD KITCHEN, respectively, that defense is precluded as a matter of law under the law of the case doctrine based on the decision rendered by the Board on March 16, 2009, which held that Registration Nos. 1,153,730 and 2,779,986 do not cover essentially the same goods which are the subject of the opposed application, namely, home security systems and components therefor.
- (6) The same conclusion applies to Registration No. 3,797,964 of the mark BRINKMANN because the goods covered by that registration are not the same or essentially the same as home security systems and components therefor.
- (7) Applicant's reliance on Opposer's alleged failure to challenge a number of third-party registrations of marks that Applicant apparently maintains are confusingly similar to Opposer's pleaded BRINKS marks is fundamentally misplaced because the basic predicate for the *Morehouse* prior registration defense is that the party asserting that defense owns the prior registrations upon which that defense is based, which is not the case with respect to any of the third-party registrations listed in ¶ 28 of Applicant's Answer.
- (7) Applicant's reliance on the third-party registrations pleaded in ¶ 28 of its Answer also is flawed to the extent that certain of those

registrations are no longer subsisting and others issued on the Supplemental Register. Apart from the ownership requirement, the status of those cancelled or expired registrations and the fact that several registrations issued on the Supplemental Register precludes any legitimate reliance thereon by Applicant in a *Morehouse* prior registration defense context.

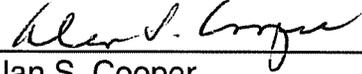
- (8) There is no genuine issue of fact with respect to whether the goods listed in Registration Nos. 1,153,730, 2,779,986 and 3,797,964 are not the same or essentially the same as the home security systems and components therefore covered by the opposed application.
- (9) There is no genuine issue of fact with respect to Applicant's non-ownership of the third-party registrations listed in ¶ 28 of the Answer.
- (10) For all of the reasons stated above, Opposer is entitled to judgment as a matter of law dismissing the *Morehouse* prior registration defense pleaded in ¶ 28 of Applicant's Answer.

The present motion is based on the prosecution history of the opposed application, the pleadings in this proceeding, and the Board's decision entered on March 16, 2009.

A Memorandum and the Declaration of Kristin D'Andrea in support of this motion are submitted concurrently herewith.

BRINK'S NETWORK, INCORPORATED

Date: January 5, 2011

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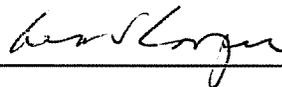
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for Summary Judgment Dismissing Applicant's Prior Registration Defense was served on the following counsel of record for Applicant by Federal Express, with confirming service by depositing the same in the U.S. Mail, first class mail postage prepaid, this 5th day of January, 2011:

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

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

MEMORANDUM IN SUPPORT OF OPPOSER'S  
MOTION FOR SUMMARY JUDGMENT DISMISSING  
APPLICANT'S PRIOR REGISTRATION DEFENSE

I. INTRODUCTION

This matter is before the Board on Opposer's motion pursuant to Rule 56 Fed. R. Civ. P. and Rule 2.127 of the Trademark Rules of Practice, which respectfully requests the Board to grant summary judgment dismissing the prior registration affirmative defense asserted in ¶ 28 of the Answer filed by Applicant Brinkmann Corporation on December 20, 2010, in response to Opposer's Third Amended Notice of Opposition (hereinafter the "Answer"). Opposer's motion is based on the prosecution history of Application Serial No. 76/483,115, (the "opposed application"), the pleadings and other papers filed in the present proceeding including specifically the Order entered by the Board on March 16, 2009, Applicant's answer to Opposer's Interrogatory No. 6, and pp. 19:23-21:15 of the transcript of the discovery deposition of Applicant's designated Rule 30(b)(6) deponent Helen Dunham, all of which demonstrate that there are no genuine

issues of material fact with respect to the Applicant's prior registration defense and that Opposer is entitled to judgment as a matter of law dismissing that affirmative defense.

## II. STATEMENT OF UNCONTESTED MATERIAL FACTS

On January 17, 2003, Applicant filed the opposed application seeking to register the mark BRINKMANN for a variety of goods, including the products in International Class 9 which are the subject of the present opposition proceeding. By virtue of the Order entered by the Board on June 28, 2005, the relevant portion of the goods in International Class 9 to which the present opposition is directed consists of "home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets" (hereinafter "home security systems and components therefor").

On August 27, 2009, Applicant filed a motion pursuant to Rule 2.87 of the Trademark Rules of Practice to divide the opposed application into: (a) an application covering all of the goods falling within International Classes 4, 6, 7, 8, 11, 12, 21 and 30 and the goods in International Class 9 other than home security systems and components therefor; and (b) an application covering home security systems and components therefore in International Class 9. Opposer did not contest that motion, but reserved the right to object to Applicant's reliance on any resulting registration of the mark BRINKMANN covering goods in International Classes 4, 6, 7, 8, 11, 12, 21 and 30 and the goods in International Class 9 other than home security systems and components therefor. Applicant's motion to divide the opposed application was granted by the Board on September 16, 2009, with the result that Registration No. 3,797,964 issued on June 8, 2010.

The principal grounds for opposition are that Applicant's use of the mark BRINKMANN for home security systems and components therefor is likely to cause confusion as to the source and/or sponsorship of Applicant's goods and is likely to cause dilution within the meaning of §§ 2(d) and 43(c) of the Federal Trademark Act, respectively.

Applicant's Answer ¶ 28 asserts the affirmative defense of "prior registration" based on the following:

- (1) Applicant's ownership of Registration No. 1,153,730 of the mark BRINKMANN (Stylized) for electrical extension cords and brackets in International Class 9; and charcoal fired and electric roasting, grilling and barbecue cookers for domestic use and portable electric lights and filters, and replacement lamps in International Class 11.
- (2) Applicant's ownership of Registration No. 2,779,986 of the mark BRINKMANN BACKYARD KITCHEN for combined outdoor grill and kitchen appliance units comprised of gas grills, sinks and coolers in International Class 11.
- (3) Applicant's ownership of Registration No. 3,797,964 of the mark BRINKMANN covering all of the goods in the opposed application as originally filed in International Classes 4, 6, 7, 8, 11, 12, 21 and 30, and the goods in International Class 9 other than home security systems and components therefor.

- (4) Some thirty-three (33) third-party registrations of marks that include the term BRINK in various forms. The goods and/or services covered by these third-party registrations are not set forth in ¶ 28 of the Answer.

The prior registration defense was established by the decision in *Morehouse Mfg. Corp. v. J. Strickland & Co.*, 407 F.2d 881, 160 USPQ 715 (CCPA 1969), which held that an opposer cannot be “damaged” within the meaning of § 13 of the Federal Trademark Act by the issuance of registration of a mark for particular goods or services if the applicant already owns an existing registration for the same or substantially identical mark for the same or substantially identical goods. As discussed more fully below, Applicant’s assertion of this defense is totally misplaced because: (a) the law of the case establishes that the goods described in Registration Nos. 1,153,730 and 2,779,986 are not essentially the same as home security systems and components therefor; (b) the goods described in Registration No. 3,797,964 are fundamentally different from home security systems and components therefor which is the predicate for the division of the opposed application; and (c) Applicant’s lack of ownership of the third-party registrations listed in ¶ 28 of the Answer and the fundamental differences between the goods and services covered by those registrations and home security systems and components therefor preclude any reliance thereon in support of the *Morehouse* prior registration defense.

### III. STANDARDS APPLICABLE TO SUMMARY JUDGMENT

Pursuant to Rule 56(c) Fed. R. Civ. P., summary judgment should be granted when the record presents no genuine issue of material fact and, based upon the undisputed facts, the moving party is entitled to judgment as a matter of law. *See, e.g.,*

*Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). The substantive law governing the civil action or proceeding will identify those facts that are material, and “only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 249 (1986).

When the summary judgment motion is supported by evidence sufficient to indicate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the burden shifts to the non-movant to demonstrate the existence of specific genuinely-disputed facts that will need to be resolved at trial. *E.g., Fram Trak Industries, Inc. v. Wiretracks LLC*, 77 USPQ2d 2000 (TTAB 2006). While the non-moving party is not required to present its entire case in response to a motion for summary judgment, “to defeat the motion the non-movant must present sufficient evidence to show an evidentiary conflict as to the material fact in dispute, . . . with due consideration to the evidentiary burdens. . . .” *Opryland USA Inc. v. Great American Music Show, Inc.*, 970 F.2d 847, 850 (Fed. Cir. 1992). The non-movant may not rest on the mere allegations of its pleadings and the arguments of counsel, but must designate specific portions of the record or produce additional evidence that shows the existence of a genuine issue of material fact. *E.g. Fram Trak Industries, Inc. v. Wiretracks LLC, supra.*

As in this instance, one of the principal purposes of the summary judgment procedure is to narrow the issues for trial. For the reasons discussed below, summary judgment dismissing Applicant’s prior registration defense should be entered thereby avoiding the necessity of the parties addressing this baseless affirmative defense during

their testimony periods and alleviating the burden on the Board of dealing with that defense when a decision is rendered.

#### IV. ARGUMENT

The principal authority for -- and indeed the origin of -- the prior registration defense is the decision in *Morehouse Mfg. Corp. v. J. Strickland & Co.*, *supra*, that an opposer cannot be damaged within the meaning of § 13 of the Federal Trademark Act by registration of a mark for particular goods or services if the applicant owns an existing registration for the same or substantially identical mark for the same or substantially identical goods. The prior registration defense also is known and commonly referred to as the *Morehouse* defense. *E.g.*, *O-M Bread, Inc. v. United States Olympic Committee*, 65 F.3d 933, 938, 36 USPQ2d 1041, 1045 (Fed. Cir. 1995) (“The prior registration or *Morehouse* defense is an equitable defense, to the effect that if the opposer cannot be further injured because there already exists an injurious registration, the opposer cannot object to an additional registration that does not add to the injury.”); *TBC Corp. v. Grand Prix, Ltd.*, 12 USPQ2d 1311, 1313 (TTAB 1989) (“The prior registration, or *Morehouse*, defense is an equitable defense in the nature of laches or acquiescence.”).

In applying the *Morehouse* prior registration defense, the party asserting that defense must establish that both the mark and the goods covered by the prior registration which it owns are identical or substantially identical to the mark and goods which are the subject of the opposed application. It is readily apparent that Applicant cannot discharge that fundamental burden of proof in this instance. Accordingly, for the

reasons set forth below, Applicant's *Morehouse* prior registration defense pleaded in ¶ 28 of the Answer is legally untenable and must be dismissed.

A. APPLICANT'S RELIANCE ON ITS OWNERSHIP OF REGISTRATION NOS. 1,153,730 AND 2,779,986 AS THE BASIS FOR ITS PRIOR REGISTRATION DEFENSE IS PRECLUDED BY THE LAW OF THE CASE

Applicant bases its *Morehouse* prior registration defense in significant part on its ownership of Registrations Nos. 1,153,730 and 2,779,986 of the marks BRINKMANN (Stylized) and BRINKMANN BACKYARD KITCHEN, respectively, for the goods listed above. However, as indicated below, reliance on those registrations in support of the prior registration defense is precluded as a matter of law by the law of the case doctrine.

On August 12, 2008, Opposer filed a motion for summary judgment dismissing Applicant's laches defense pleaded in the Answer filed on May 16, 2005. In its opposition to that motion, Applicant argued that "a laches defense in an opposition proceeding may be based upon the opposer's failure to object to an applicant's prior registration of substantially the same mark for substantially the same goods or services" and specifically referred to Registration Nos. 1,153,730 and 2,779,986 as supporting such a defense in the present proceeding. (Applicant Brinkmann's Opposition to Opposer's Motion for Partial Summary Judgment to Dismiss Applicant's Laches Defense, pp. 11-13.) In response to that argument, Opposer took the position that Applicant was essentially asserting a *Morehouse* defense which is not applicable because Registration Nos. 1,153,730 and 2,779,986 do not cover substantially the same goods at issue in this proceeding or any substantially similar goods. (Reply Memorandum in Support of Opposer's Motion for Summary Judgment Dismissing Laches Defense, pp. 8-9.)

In the Order entered on March 16, 2009, the Board granted Opposer's motion for summary judgment dismissing Applicant's laches defense and specifically rejected Applicant's reliance on the argument based on the *Morehouse* prior registration defense:<sup>1</sup>

"[W]e find no genuine issue that the goods subject to opposition [home security systems and components therefor] are not substantially the same as the goods covered in applicant's two prior registrations [Registration Nos. 1,153,170 and 2,779,986]. Accordingly, applicant cannot rely on either of its prior registrations to establish that opposer unreasonably delayed in asserting its rights applicant's BRINKMANN mark." (Order, pp. 4-5.)

Under the law of the case doctrine, a court should not reopen issues decided in earlier stages of the same litigation. *E.g., Agostini v. Felton*, 521 U.S. 203 (1997). This rule of practice promotes efficiency and prevents re-litigation of previously settled issues. *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 815-16 (1988). The Board does apply the law of the case doctrine in appropriate circumstances such as the present one. *E.g., General Mills v. Health Valley Foods*, 24 USPQ2d 1270, 1275 (TTAB 1992) (noting that in situations where a party asserts claim preclusion, issue preclusion, judicial estoppel, or law of the case, the Board will necessarily consider the prior decision to determine the preclusive effect); *Cantine Torresella, S.r.l. v. Torres*, 1986 TTAB LEXIS 180, \*6 (TTAB 1986) (noting that a decision made on an issue at one stage of a proceeding becomes precedent to be followed in successive stages of the same proceeding).

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<sup>1</sup> A true copy of the Board's Order of March 16, 2009 is annexed as Appendix A to the D'Andrea Declaration.

Accordingly, the Board's Order of March 16, 2009 holding that that the goods covered by Registration Nos. 1,153,730 and 2,779,986 are not substantially the same as the goods which are the subject of the opposed application constitutes the law of the case and therefore precludes Applicant from relying on Registration Nos. 1,153,730 and 2,779,986 to support *Morehouse* prior registration defense pleaded in ¶ 28 of the Answer. The fact that the March 16, 2009 Order is designated as non-precedent does not preclude application of the law of the case doctrine in this instance.<sup>2</sup>

**B. APPLICANT'S RELIANCE ON OWNERSHIP OF REGISTRATION NO. 3,797,964 AS THE BASIS FOR THE PRIOR REGISTRATION DEFENSE LACKS MERIT BECAUSE THE GOODS DESCRIBED IN THAT REGISTRATION ARE FUNDAMENTALLY DIFFERENT FROM HOME SECURITY SYSTEMS AND COMPONENTS THEREFOR**

It is well established that an opposer's failure to contest registration of the same mark on different goods does not give rise to a *Morehouse* prior registration defense. *E.g., Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976); *Jackes-Evans Mfg. Co. v. Jaybee Mfg. Corp.*, 485 F.2d 1342, 179 USPQ 81 (CCPA 1973); *Teledyne Technologies, Inc. v. Western Skyways, Inc.*, 78 USPQ2d 1203 (TTAB 2006); *La Fara Importing Co. v. F. Lli de Cecco di Filippo Fara S. Martino S.p.a.*, 8 USPQ2d 1143 (TTAB 1988). Indeed, that is the predicate for the Board's decision of March 16, 2009 granting Opposer's motion for summary judgment dismissing Applicant's laches defense. It is similarly the basis on which Applicant's *Morehouse* defense should be rejected as to Registration No. 3,797,964.

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<sup>2</sup> *TBMP* § 101(3) provides that a nonprecedential decision will be considered in determining issues of law of the case when a party to the pending Board proceeding was also a party in the other proceeding. Clearly, this principle will apply when the nonprecedential decision is rendered in the same proceeding in which the law of the case doctrine is to be applied.

There is an extremely strict standard for invoking the *Morehouse* prior application defense that requires the goods or services in a prior registration and contested application be “identical, substantially the same, or so related as to represent in law a distinction without difference.” *La Fara Importing Co. v. F. Lli de Cecco di Filippo Fara S. Martino S.p.a.*, 8 USPQ2d at 1147. Even some close relationship between the goods is an insufficient basis on which to invoke the defense. See e.g., *Mag Instrument, Inc. v. Brinkmann Corp.*, 96 USPQ2d 1701, 1712 (TTAB 2010) (denying a *Morehouse* defense because “flashlights” and “hand-held spotlights,” though similar in nature, were not substantially the same); *Citigroup Inc. v. Capital City Bank Group, Inc.*, 94 USPQ2d 1645, 1652-53 (TTAB 2010) (denying a *Morehouse* defense because there was a clear difference between “banking services” and “financial services”); *Teledyne Technologies, Inc. v. Western Skyways, Inc.*, 78 USPQ2d at 1209 (denying a *Morehouse* defense because, although “aircraft log books” and “aircraft engine overhaul and reconditioning services” were related to the “aircraft engines” in the contested application, they were clearly different goods and services); *Airport Canteen Services, Inc., Et Al. v. Farmer's Daughter, Inc.*, 184 USPQ 622, 626-27 (TTAB 1974) (denying a *Morehouse* defense because, although “catering services” and “restaurant services” were related, they were “distinctly different”). Because the *Morehouse* prior registration defense requires a remarkably high standard of similarity between goods and because the goods in this prior registration are fundamentally different from the limited set of goods described as “home security systems and components therefor” in the opposed application, Registration No. 3,797,964 cannot form the basis of a *Morehouse* prior registration defense.

The goods described in Registration No. 3,797,964 fail to meet the high degree of similarity required for invoking the *Morehouse* defense because the record shows the goods in the opposed application are limited in scope. Applicant's response to Interrogatory No. 6 provides a list of seven products they consider to be included in the description "home security systems and components therefor."<sup>3</sup> This list is comprised of home security solar motion activated lighting systems and components thereof, five different motion detectors, and home security wireless security systems and components thereof. In her oral deposition, Applicant's Rule 30(b)(6) deponent Helen Dunham confirmed that these seven items were an accurate identification of all of the products that are included in the descriptive language "home security systems and components therefor" set forth in the opposed application. (Dunham Dep., pp. 19:23-21:15.<sup>4</sup>) As a Rule 30(b)(6) witness, Ms. Dunham was required to testify as to the information reasonably available to Applicant and her testimony is binding on Applicant. *See, e.g. Poole ex. Rel. Elliott v. Textron, Inc.*, 192 F.R.D. 494, 504 (D. Md. 2000); *United States v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C. 1996).

In a *Morehouse* prior registration defense context, the relevant goods in the opposed application (*viz.*, home security systems and components therefor) are compared to the goods Applicant's prior Registration No. 3,797,964. The goods in that

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<sup>3</sup> A true copy of Applicant's response to Opposer's Interrogatory No. 6 listing these seven products is annexed as Appendix B to the D'Andrea Declaration. The same response to Interrogatory No. 6 was stated in Applicant's First Amended and Supplemental Responses to Opposer's First Set of Interrogatories, a true copy of which is annexed as Appendix C to the D'Andrea Declaration.

<sup>4</sup> A true copy of pp. 19:23-21:15 of the Dunham Deposition transcript is annexed as Appendix D to the D'Andrea Declaration.

registration are divided into International classes 4, 6, 7, 8, 11, 12, 21 and 30, and the goods in International class 9 other than home security systems and components therefor. A class by class examination of these goods demonstrates that none of these goods are remotely similar to home security systems and components therefor.

Several classes of goods in Registration No. 3,797,964 should be precluded on the basis of their dissimilarity and the Board's Order March 16, 2009. The goods described in class 4 are "charcoal briquettes and wood chunks for use in smoking and grilling food." Similarly, some of the goods described in class 11 are "barbeque grills and smokers, gas cookers and gas fryers, . . . replacement parts and accessories for barbeque grills, smokers, . . . charcoal pans and water pans" etc. Under the prior registration strict standard of similarity, these goods are plainly not similar to the goods in the opposed application. Instead, these goods are similar in nature to the goods described in Applicant's Registration No. 2,779,986 for BRINKMANN BACKYARD KITCHEN, which included "combined outdoor grill and kitchen appliance units comprised of gas grills, sinks and coolers." In the Board's Order of March 16, 2009, the Board held that there was no genuine issue that the goods of the opposed application were not substantially the same as the goods covered in Registration No. 2,779,986. Similarly, there can be no genuine issue that the goods in class 4 and a portion of class 11 of Registration No. 3,797,964 are not substantially the same as the goods in the opposed application.

The other classes of goods in Registration No. 3,797,964 achieve no closer similarity to the goods in the opposed application. The goods in class 6 of Registration No. 3,797,964 are "metal birdbaths; metal compost bins; metal garden hose hangers,

and metal tubs and metal flashlight key rings.” The goods in class 7 include “vacuum cleaners and [vacuum] accessories.” The goods in class 8 include “hand tools, namely, protractor saw guides and multi-purpose hand tools comprising pliers, knife blades, screwdrivers,” etc. The unopposed goods in class 9 include “batteries; wall mount brackets for battery chargers and flashlight; cooking thermometers; electrical extension cords,” etc. The remaining items described in class 11 are lighting products, including “flashlights, spotlights, electric and fluorescent lanterns,” etc. The goods in class 12 include “wheelbarrows and hand carts for carrying weighted objects and dollies.” The goods in class 21 include “house wares and garden accessories” and the goods in class 30 include “seasonings and spices.”

There simply is no genuine issue that none of these classes of items comes close to achieving substantial identity with the limited goods in the opposed application consisting of home security systems and components therefor. Thus, Registration No. 3,797,964 cannot be relied on as a basis for the *Morehouse* prior registration defense.

**C. APPLICANT’S RELIANCE ON THIRD-PARTY REGISTRATIONS TO SUPPORT ITS PRIOR REGISTRATION DEFENSE IS PRECLUDED BY THE VERY DEFINITION OF THAT DEFENSE**

Applicant’s Answer ¶ 28 lists thirty-three third-party registrations of “BRINK” marks in support of its *Morehouse* prior registration defense. However, three of these registrations are no longer subsisting<sup>5</sup> and, for that reason alone, could not be relied on

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<sup>5</sup> Annexed as collective Appendix E to the D’Andrea Declaration are copies of the USPTO printouts of Registration No. 2,749,447 of the mark BRINK’S PLACE, Registration No. 2,297,951 of the mark BRINK & COTTON, and Registration No. 1,554,418 of the mark BRINK AND COTTON which show that these registrations were cancelled on March 14, 2010, July 10, 2010 and April 10, 2010, respectively, well before the filing of Applicant’s Answer on December 20, 2010.

in a *Morehouse* prior registration defense context. *Land O Lakes, Inc. v. Hugunin*, 88 USPQ2d 1957, 1959 (TTAB 2008) (*Morehouse* prior registration defense is not available when the prior registration has been cancelled or is expired). Also, four of these third-party registrations issued on the Supplemental Register<sup>6</sup> and therefore cannot be relied upon in support of a *Morehouse* prior registration defense. *Walden Book Co. v. B. Dalton Co.*, 4 USPQ2d 1414, 1415 (TTAB 1987).

Notwithstanding that erroneous inclusion of wholly inappropriate references, Applicant's reliance on the remaining twenty-six third-party "BRINK" registrations listed in ¶ 28 of the Answer, which are subsisting and issued on the Principal Register, is fatally flawed for the reasons set forth below.

1. The *Morehouse* Prior Registration Defense Is Not Applicable Where the Party Asserting that Defense Does Not Own the Prior Registrations in Question

It is well settled that the *Morehouse* prior registration defense applies only where the party asserting that defense owns the other registration(s) being relied on as the basis for that defense. As noted in *Green Spot Ltd. v. Vitasoy Int'l Holdings Ltd.*, 86 USPQ2d 1283, 1285 (TTAB 2008), the "*Morehouse* defense is an equitable doctrine that applies where an applicant *owns* a prior registration for essentially the same mark identifying essentially the same goods (or services) that are the subject mark and goods of the proposed application." (Emphasis added.) Numerous other cases considering the *Morehouse* defense have similarly defined that defense in terms of the applicant's

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<sup>6</sup> Annexed as collective Appendix F to the D'Andrea Declaration are copies of the USPTO printouts of Registration No. 3,819,888 of the mark BRINKLEY, Registration No. 3,455,959 of the mark BRINKLEY BOOKS, Registration No. 2,849,847 of the mark VANDENBRINK, and Registration No. 2,217,974 of the mark BRINKMANN PUMPS which all issued on the Supplemental Register.

ownership of the prior registrations being relied upon in that context. *E.g., Mag Instrument, Inc. v. Brinkmann Corp.*, 96 USPQ2d at 1711 (“The *Morehouse* defense, an equitable affirmative defense, is available in situations where an applicant already *owns* a registration for the same (or substantially similar) mark and goods or services, and which registration has not been challenged.”) (emphasis added); *Citigroup Inc. v. Capital City Bank Group, Inc.*, 94 USPQ2d at 1651 (“This [prior registration] defense applies where an applicant *owns* a prior registration for essentially the same mark identifying essentially the same goods or services that are the subject of the proposed application.”) (emphasis added). Applicant’s lack of ownership of the registrations in question precludes any reliance thereon in support of the *Morehouse* prior registration defense.

2. The *Morehouse* Prior Registration Defense Is Not Applicable Because the Goods and Services Described in the Third-Party Registrations Relied on by Applicant Are Not Identical or Substantially Identical to Home Security Systems and Components Therefor

Even assuming *arguendo* that subsisting third-party registrations could be relied on to support a *Morehouse* prior registration defense, the goods and services described in the subsisting third-party registrations listed in ¶ 28 which issued on the Principal Register are fundamentally different from home security systems and components therefor. That deficiency may explain why Applicant did not include any statement in ¶ 28 identifying the goods and services described in these registrations. To remedy that omission, annexed as Appendix G to the D’Andrea Declaration is a chart which lists the subsisting Principal Register registrations designated in ¶ 28 that does provide a statement of the goods or services described in those registrations. The goods and

services covered by those third-party quite clearly are not identical or substantially identical to home security systems and components therefor. The absence of such identity or substantial identity is another reason that precludes application of the *Morehouse* prior registration defense asserted by Applicant. See, e.g., *Mag Instrument, Inc. v. Brinkmann Corp.*, 96 USPQ2d at 1712 (denying a *Morehouse* defense because “flashlights” and “hand-held spotlights” were not substantially the same); *Citigroup Inc. v. Capital City Bank Group, Inc.*, 94 USPQ2d at 1652-53 (finding a clear difference between “banking services” and “financial services”); *Teledyne Technologies, Inc. v. Western Skyways, Inc.*, 78 USPQ2d at 1209 (finding that “aircraft log books” and “aircraft engine overhaul and reconditioning services” were clearly different from “aircraft engines”); *Airport Canteen Services, Inc., Et Al. v. Farmer’s Daughter, Inc.*, 184 USPQ 626-27 (finding a distinct difference between “catering services” and “restaurant services”).

\*

\*

\*

Accordingly, for all of the reasons stated above, the third-party registrations relied upon by Applicant in ¶ 28 of the Answer cannot as a matter of law and/or fact afford a basis for the *Morehouse* prior registration defense. Indeed, given the clear mandate of Rule 11(b)(2) Fed. R. Civ. P. that a pleaded defense must be warranted by existing law or by a good faith argument for the expansion of existing law, it is difficult to understand how Applicant could even allege that the *Morehouse* prior registration defense is applicable to the extent that it is predicated on third-party registrations.

V. CONCLUSION

For all of the foregoing reasons, summary judgment should be entered as a matter of law dismissing Applicant's prior registration affirmative defense.

BRINK'S NETWORK, INCORPORATED

Dated: January 5, 2011

By: 

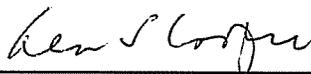
Alan S. Cooper  
Alesha M. Dominique  
Leigh Kobrinski  
Howrey LLP  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
(202) 783-0800  
Fax: (202) 383-7195

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum in Support of Opposer's Motion for Summary Judgment Dismissing Applicant's Prior Registration Defense was served on the following counsel of record for Applicant by Federal Express, with confirming service by depositing the same in the U.S. Mail, first class mail postage prepaid, this 5th day of January, 2011:

Gary A. Clark, Esq.  
Susan Hwang, Esq.  
Sheppard, Mullin, Richter & Hampton LLP  
333 South Hope Street, 48<sup>th</sup> Floor  
Los Angeles, California 90071



---



(4) Attached hereto as Appendix C is a true copy of Applicant's response to Opposer's Interrogatory No. 6 stated in Applicant's First Amended and Supplemental Responses to Opposer's First Set of Interrogatories.

(5) Attached hereto as Appendix D is a true copy of pp. 19:23-21:15 of the transcript of the deposition of Helen Dunham, Applicant's Rule 30(b)(6) witness, taken on February 16, 2007.

(5) Attached hereto as collective Appendix E are copies of printouts of Registration No. 2,749,477 of the mark BRINK'S PLACE, Registration No. 2,297,951 of the mark BRINK & COTTON, and Registration No. 1,554,418 of the mark BRINK AND COTTON which I obtained from the website of the U.S. Patent and Trademark Office and which show that these registrations were cancelled on March 14, 2010, July 10, 2010 and April, 10, 2010, respectively.

(6) Attached hereto as collective Appendix F are copies of printouts of Registration No. 3,819,888 of the mark BRINKLEY, Registration No. 3,455,959 of the mark BRINKLEY BOOKS, Registration No. 2,849,847 of the mark VANDENBRINK, and Registration No. 2,217,974 of the mark BRINKMANN PUMPS which I obtained from the website of the U.S. Patent and Trademark Office and which show that each of these registrations issued on the Supplemental Register.

(7) Annexed hereto as Appendix G is a chart which lists the subsisting registrations designated in ¶ 28 of the Answer filed by Applicant on December 20, 2010 that issued on the Principal Register. The fourth column in this chart is a statement of the goods and services recited in these registrations.

In accordance with 28 U.S.S. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed at Washington, D.C., this 5th day of January, 2011.

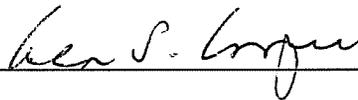


Kristin T. D'Andrea

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Declaration of Kristin T. D'Andrea in Support Of Opposer's Motion for Partial Summary Judgment Dismissing Applicant's Prior Registration Defense was served on the following counsel of record for Applicant by Federal Express, with confirming service by depositing the same in the U.S. Mail, first class mail postage prepaid, this 5th day of January, 2011:

Gary Clark, Esq.  
Susan Hwang, Esq.  
Sheppard, Mullin, Richter & Hampton LLP  
333 South Hope Street, 48<sup>th</sup> Floor  
Los Angeles, California 90071

  
\_\_\_\_\_

# **APPENDIX A**

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

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

jk

Mailed: March 16, 2009

Opposition No. 91164764

BRINK'S NETWORK, INCORPORATED

v.

THE BRINKMANN CORPORATION

**Hairston, Kuhlke and Ritchie,  
Administrative Trademark Judges.**

**By the Board:**

The Brinkmann Corporation ("applicant") seeks registration of the mark BRINKMANN, in standard characters, for goods in International Classes 4, 6, 7, 8, 9, 11, 12, 21 and 30.<sup>1</sup> Brink's Network, Incorporated ("opposer") has opposed registration of the mark for the International Class 9 goods identified as "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 flashlights, cooking thermometers," and pleads ownership of nine registrations for the marks BRINKS, BRINK'S, and BRINKS HOME SECURITY, ("BRINKS mark" or "BRINKS marks") registered for various commercial and residential

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<sup>1</sup> Application Serial No. 76483115, filed January 17, 2003, for the mark BRINKMANN, alleging a June 12, 1978 date of first use

Opposition No. 91164764

security related systems, products and services.<sup>2</sup> Opposer asserts the grounds of priority and likelihood of confusion under Trademark Act Section 2(d), and dilution under Trademark Act Section 43(c).

In its answer, applicant denied the salient allegations in the notice of opposition, and asserted the affirmative defense of laches.

This proceeding is before the Board for consideration of opposer's motion (filed August 12, 2008) for partial summary judgment dismissing applicant's laches defense, and applicant's motion (filed September 25, 2008) for partial summary judgment to dismiss opposer's dilution claim. The motions are fully briefed.

A party is entitled to summary judgment when it has demonstrated that there are no genuine issues as to any material facts, and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The evidence must be viewed in a light favorable to the nonmoving party, and all justifiable inferences are to be drawn in the nonmovant's favor. *Opryland USA Inc. v. The Great American Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992).

---

and date of first use in commerce on the goods in International Class 9.

<sup>2</sup> Specifically, opposer pleads ownership of the Registration No. 2476114 (BRINKS HOME SECURITY), Registration No. 1313790 (BRINKS), Registration No. 529622 (BRINKS), Registration No. 1309375 (BRINK'S), Registration No. 1412587 (BRINK'S HOME SECURITY), Registration No. 1411610 (BRINKS), Registration No. 2330884 (BRINKS HOME SECURITY), Registration No. 2691470 (BRINK'S), and Registration No. 2646784 (BRINKS).

Opposition No. 91164764

Opposer's motion for partial summary judgment

Opposer seeks judgment as a matter of law with respect to applicant's laches defense, asserting that, inasmuch as the time period for calculating the essential element of unreasonable delay runs from the date the mark was published for opposition, there is no genuine issue that applicant cannot establish this element, and thus cannot maintain its defense. Specifically, opposer argues that a period of six months, that is, from October 5, 2004, the date the subject mark was published for opposition, to April 1, 2005, the date opposer filed its opposition, is insufficient to establish that opposer unreasonably delayed in asserting its claims.

In response, applicant argues that its laches defense is viable against opposer's claims of likelihood of confusion and dilution because determination of delay for laches purposes may be based on opposer's failure to oppose or otherwise object to applicant's prior registration of substantially the same mark for substantially the same goods, citing e.g., *Aquion Partners L.P. v. Envirogard Products Ltd.*, 43 USPQ2d 1371 (TTAB 1997). Specifically, applicant asserts that it can establish unreasonable delay inasmuch as opposer did not object to either of applicant's two prior registrations, Registration No. 1153730 for the mark BRINKMANN for "electrical extension cords, brackets, and electric connectors for use therewith" in International

Opposition No. 91164764

Class 9, and "charcoal fired and electric roasting, grilling and barbecue cookers for domestic use and portable electric lights and filters, and replacement lamps" in International Class 11, or Registration No. 2779986 for the mark BRINKMANN BACKYARD KITCHEN (BACKYARD KITCHEN disclaimed) for "combined outdoor grill and kitchen appliance units comprised of gas grills, sinks and coolers" in International Class 11.

In reply, opposer maintains that applicant cannot rely on either of its existing registrations inasmuch as the goods covered therein are not the same or substantially the same as those which are subject to the current opposition.

The affirmative defense of laches is generally not available in opposition proceedings before the Board. See, e.g., *Turner v. Hops Grill & Bar Inc.*, 52 USPQ2d 1310 (TTAB 1999). Under certain limited circumstances, the equitable defense of laches in an opposition proceeding may be based on opposer's failure to object to an earlier registration of substantially the same mark for substantially the same goods. See *Aquion Partners*, *supra* at 1373, and cases cited therein. In this case, however, we find no genuine issue that the goods subject to opposition are not substantially the same as the goods covered in applicant's two prior registrations. Accordingly, applicant cannot rely on either of its prior registrations to establish that opposer

Opposition No. 91164764

unreasonably delayed in asserting its rights against opposer's BRINKMANN mark.

In this proceeding, the element of delay for laches purposes runs from the date the mark in the application was published for opposition. See *National Cable Television Association Inc. v. American Cinema Editors Inc.*, 937 F.2d 1572, 19 USPQ2d 1424 (Fed. Cir. 1991). Applicant cannot, as a matter of law, establish unreasonable delay, and thus cannot assert the affirmative defense of laches against opposer's grounds of likelihood of confusion or dilution.<sup>3</sup>

We find that opposer has met its burden of demonstrating that no genuine issue of material fact exists with respect to whether applicant can maintain laches as an affirmative defense. Accordingly, opposer's motion for partial summary judgment dismissing applicant's laches defense is hereby granted, and applicant's affirmative defense is stricken from its answer.

Applicant's motion for partial summary judgment

To the extent that applicant moves for summary judgment on the basis that its laches defense defeats opposer's claim that the mark BRINKMANN dilutes or is likely to dilute the

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<sup>3</sup> Moreover, the six month period between the publication date of October 5, 2004 and the opposition filing date of April 1, 2005 is insufficient to establish unreasonable delay for purposes of applicant's laches defense. See, e.g. *Charrette Corp. v. Bowater Communication Papers Inc.*, 13 USPQ2d 2040 (TTAB 1989) (14-month delay is insufficient); *Ralston Purina Company v. Midwest Cordage Company, Inc.*, 153 USPQ 73 (CCPA 1967) (six-month delay is insufficient in the absence of substantial prejudice); *Plymouth*

Opposition No. 91164764

distinctiveness of opposer's BRINKS mark, applicant's motion is denied in view of our determination that, under the circumstances in this case, the affirmative defense is not available to applicant. Furthermore, we 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.

To prevail on a claim of dilution under Trademark Act Section 43(c), an opposer must demonstrate that its mark is famous, that its mark became famous prior to applicant's use of the opposed mark, and that use of applicant's mark is likely to dilute the distinctive quality of opposer's mark. *See Toro Co. v. ToroHead Inc.*, 61 USPQ2d 1164, 1173 (TTAB 2001).

To the extent that applicant moves for summary judgment on the merits of opposer's dilution claim, applicant has not met its burden of demonstrating that opposer cannot prove the elements of its dilution claim. Inasmuch as the record includes the declaration of applicant's president indicating that applicant has used the BRINKMANN mark on a variety of consumer products since 1975, as well as the declaration of a former supervisor, manager and curator of opposer indicating

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*Cordage Company v. Solar Nitrogen Chemicals, Inc.*, 152 USPQ 202 (TTAB 1966) (three-year delay is insufficient).

Opposition No. 91164764

that opposer used the BRINK'S mark to promote various products as early as 1950, applicant has not met its burden of showing that no genuine issue of material fact remains with respect to the element of whether opposer's BRINKS mark became famous prior to applicant's use of its BRINKMANN mark. See *Toro Co. v. ToroHead Inc.*, *supra*. Thus, applicant has not made a sufficient showing to support judgment in its favor.

We cannot conclude that applicant is entitled to judgment as a matter of law with respect to the dilution claim, and applicant's motion for partial summary judgment to dismiss opposer's claim of dilution is denied.<sup>4</sup>

Schedule

Proceedings are hereby resumed. The close of discovery, and testimony periods, are reset as follows:

DISCOVERY PERIOD TO CLOSE:	05/29/09
30-day testimony period for party in position of plaintiff to close:	08/27/09
30-day testimony period for party in position of defendant to close:	10/26/09
15-day rebuttal testimony period to close:	12/10/09

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<sup>4</sup> The fact that we have identified a genuine issue of material fact in denying applicant's motion for summary judgment should not be construed as a finding that such issue is necessarily the only issue that remains for trial. Also, the parties should note that the evidence submitted in connection with the motions for summary judgment is of record only for consideration of those motions. To be considered at final hearing, any such evidence must be properly introduced in evidence during the appropriate trial period. See *Hard Rock Cafe Licensing Corp. v. Elsea*, 48 USPQ2d 1400 (TTAB 1998); *Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993).

Opposition No. 91164764

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.

**NEWS FROM THE TTAB:**

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:  
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>  
[http://www.uspto.gov/web/offices/com/sol/notices/72fr42242\\_FinalRuleChart.pdf](http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf)

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:  
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>

## **APPENDIX B**

discuss Brink's Network's filing of the first request for extension of time to file the Notice of Opposition.

Brinkmann reserves the right to amend and/or supplement this response as its investigations and discovery progress.

**INTERROGATORY NO. 6:**

Identify with specificity all goods Applicant provides under the mark BRINKMANN which Applicant believes to be included in the description "home security systems and components therefor."

**RESPONSE TO INTERROGATORY NO. 6:**

Subject to and without waiving the General Objections, which are incorporated by reference, Brinkmann provides the following response:

Brinkmann considers the following products offered under the mark BRINKMANN to be included in the description "home security systems and components therefor":

- Home Security Solar Motion Activated Lighting System, and all components thereof
- Solar Home Security SL-7 Motion Detector
- Solar Home Security SL-8 Motion Detector
- Home Security Halogen Motion Detector
- Home Security 110° Motion Detector
- Home Security 180° Motion Detector
- Home Security Wireless Security System, and all components thereof

Brinkmann offers replacement lamps for these products.

## **APPENDIX C**

discuss Brink's Network's filing of the first request for extension of time to file the Notice of Opposition.

Brinkmann reserves the right to amend and/or supplement this response as its investigations and discovery progress.

**INTERROGATORY NO. 6:**

Identify with specificity all goods Applicant provides under the mark BRINKMANN which Applicant believes to be included in the description "home security systems and components therefor."

**RESPONSE TO INTERROGATORY NO. 6:**

Subject to and without waiving the General Objections, which are incorporated by reference, Brinkmann provides the following response:

Brinkmann considers the following products offered under the mark BRINKMANN to be included in the description "home security systems and components therefor":

- Home Security Solar Motion Activated Lighting System, and all components thereof
- Solar Home Security SL-7 Motion Detector
- Solar Home Security SL-8 Motion Detector
- Home Security Halogen Motion Detector
- Home Security 110° Motion Detector
- Home Security 180° Motion Detector
- Home Security Wireless Security System, and all components thereof

Brinkmann offers replacement lamps for these products.

## **APPENDIX D**

Witness: Helen Dunham

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

3 BRINK'S NETWORK )  
4 INCORPORATED, )

**Certified Copy**

5 Opposer, )

6 VS. ) Opposition No. 91164764

7 THE BRINKMANN CORPORATION )

8 Applicant. )

9 \*\*\*\*\*

10 ORAL DEPOSITION OF

11 HELEN DUNHAM

12 FEBRUARY 16, 2007

13 VOLUME I

14 \*\*\*\*\*

15  
16 ORAL DEPOSITION OF HELEN DUNHAM, produced as  
17 a witness at the instance of the Opposer, and duly  
18 sworn, was taken in the above-styled and numbered cause  
19 on the 16th day of February, 2007, from 9:03 a.m. to  
20 10:57 a.m., before Stacey R. Cruz, CSR in and for the  
21 State of Texas, reported by machine shorthand, at the  
22 offices of Carrington Coleman, Sloman & Blumenthal,  
23 located at 901 Main Street, Dallas, Texas, in accordance  
24 with the Federal Rules of Civil Procedure and the  
25 provisions stated on the record or attached hereto.

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23 Q. Okay. Would you please look at interrogatory  
24 number 6 in Exhibit 2?

25 A. (Witness complies.)

1 Q. There is a listing there that's about two-thirds  
2 down the page of the products offered under the mark  
3 "Brinkmann" that are included in the description, quote  
4 Home security systems and components therefore. Do you  
5 see that?

6 A. Yes.

7 Q. There are one, two, three, four, five, six, seven  
8 products, correct?

9 A. One, two, three, four, five, six.

10 Q. Let me read them.

11 A. Okay.

12 Q. The first is home security solar motion-activated  
13 lighting system --

14 A. Okay.

15 Q. -- and all components thereof, correct?

16 A. Yes.

17 Q. The next is solar home security SL-7 motion  
18 detector, correct?

19 A. Yes.

20 Q. The next is solar home security SL-8 motion  
21 director, correct?

22 A. Okay. Yes.

23 Q. And the next is home security halogen motion  
24 detector, correct?

25 A. Yes.

1 Q. And the next is home security 110-degree motion  
2 detector, correct?

3 A. Yes.

4 Q. And the next is home security 180-degree motion  
5 detector, correct?

6 A. Yes.

7 Q. And the last is home security wireless security  
8 system and all components thereof, correct?

9 A. Yes.

10 Q. And since the answer to the interrogatories are  
11 not verified, can I ask you, please, to confirm that this  
12 is an accurate statement with respect to the products  
13 that are included in the description "home security  
14 systems and components therefore"?

15 A. Yes.

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## **APPENDIX E**



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**Typed Drawing**

**Word Mark** BRINK'S PLACE  
**Goods and Services** (CANCELLED) IC 041. US 100 101 107. G & S: ENTERTAINMENT IN THE NATURE OF ON-GOING EDUCATIONAL TELEVISION PROGRAMS CONCERNING AWARENESS, UNDERSTANDING, PREVENTION, CARE AND TREATMENT OF ALCOHOLISM AND DRUG DEPENDENCE. FIRST USE: 19950700. FIRST USE IN COMMERCE: 19950700  
**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 76334495  
**Filing Date** November 6, 2001  
**Current Filing Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** May 20, 2003  
**Registration Number** 2749447  
**Registration Date** August 12, 2003  
**Owner** (REGISTRANT) Christopher D. Smithers Foundation, Inc., The CORPORATION NEW YORK P.O. Box 67 Mill Neck NEW YORK 11765  
**Attorney of Record** LAURA B. SIEGAL  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** DEAD  
**Cancellation Date** March 14, 2010

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**Typed Drawing**

<b>Word Mark</b>	BRINK & COTTON
<b>Goods and Services</b>	(CANCELLED) IC 008. US 023 028 044. G & S: BENCH VISES MADE OF METAL, C-CLAMPS, BAR CLAMPS AND WORKHOLDING CLAMPS. FIRST USE: 19600000. FIRST USE IN COMMERCE: 19600000
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	75552603
<b>Filing Date</b>	September 14, 1998
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	September 14, 1999
<b>Registration Number</b>	<b>2297951</b>
<b>Registration Date</b>	December 7, 1999
<b>Owner</b>	(REGISTRANT) WILTON CORPORATION CORPORATION COLORADO 300 South Hicks Road Palatine ILLINOIS 60067  (LAST LISTED OWNER) WMH TOOL GROUP, INC. CORPORATION WASHINGTON 2420 VANTAGE DR. ELGIN ILLINOIS 60123
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	JOHN C BREZINA
<b>Prior Registrations</b>	1554418;2108091
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR).

Live/Dead Indicator      DEAD  
Cancellation Date   July 10, 2010

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**Typed Drawing**

<b>Word Mark</b>	BRINK AND COTTON
<b>Goods and Services</b>	(CANCELLED) IC 008. US 023. G & S: HAND TOOLS; NAMELY, CLAMPS. FIRST USE: 19250000. FIRST USE IN COMMERCE: 19250000
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	73753200
<b>Filing Date</b>	September 21, 1988
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	June 13, 1989
<b>Registration Number</b>	<b>1554418</b>
<b>Registration Date</b>	September 5, 1989
<b>Owner</b>	(REGISTRANT) WARREN TOOL CORPORATION DBA THE WARREN TOOL GROUP CORPORATION OHIO P.O. BOX 68 11900 WINROCK ROAD HIRAM OHIO 44234  (LAST LISTED OWNER) WARREN TOOL GROUP, INC. CORPORATION ASSIGNEE OF DELAWARE 2420 Vantage Drive Elgin ILLINOIS 60124
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	DONALD J. BOBAK
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR).
<b>Live/Dead Indicator</b>	DEAD
<b>Cancellation Date</b>	April 10, 2010

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## **APPENDIX F**



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**BRINKLEY**

<b>Word Mark</b>	BRINKLEY
<b>Goods and Services</b>	IC 041. US 100 101 107. G & S: Educational and entertainment services, namely, providing recognition and incentives by way of celebrations and awards to school children who, one day each week, give up all electronic and video forms of amusement. FIRST USE: 20090311. FIRST USE IN COMMERCE: 20090311
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	77789730
<b>Filing Date</b>	July 26, 2009
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Supplemental Register Date</b>	April 29, 2010
<b>Registration Number</b>	<b>3819888</b>
<b>Registration Date</b>	July 13, 2010
<b>Owner</b>	(REGISTRANT) Levine, Rita INDIVIDUAL UNITED STATES 62 17th St. Wading River NEW YORK 11792
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	SUPPLEMENTAL
<b>Live/Dead</b>	

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# Brinkley Books

**Word Mark** BRINKLEY BOOKS  
**Goods and Services** IC 016. US 002 005 022 023 029 037 038 050. G & S: Children's books. FIRST USE: 20070517. FIRST USE IN COMMERCE: 20070517  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 77245235  
**Filing Date** August 2, 2007  
**Current Filing Basis** 1A  
**Original Filing Basis** 1A  
**Supplemental Register Date** May 13, 2008  
**Registration Number** 3455959  
**Registration Date** June 24, 2008  
**Owner** (REGISTRANT) Johnson, Laura Leah INDIVIDUAL UNITED STATES PO Box 1753 Healdsburg CALIFORNIA 95448  
**Attorney of Record** Larry D. Johnson  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BOOKS" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK  
**Register** SUPPLEMENTAL  
**Live/Dead Indicator** LIVE

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#### Typed Drawing

**Word Mark** VANDENBRINK

**Goods and Services** IC 012. US 019 021 023 031 035 044. G & S: LAND VEHICLES, NAMELY PASSENGER VEHICLES, NAMELY AUTOMOBILES, TRICYCLES, AND MOTORBIKES

IC 025. US 022 039. G & S: Clothing, namely trousers, shorts, sweaters, shirts, t-shirts, underwear, footgear; headgear, namely hats and caps

**Mark Drawing Code** (1) TYPED DRAWING

**Serial Number** 76358049

**Filing Date** January 11, 2002

**Current Filing Basis** 44E

**Original Filing Basis** 1B

**Supplemental Register Date** November 17, 2003

**Registration Number** 2849847

**Registration Date** June 1, 2004

**Owner** (REGISTRANT) Brinks Westmaas B.V. CORPORATION NETHERLANDS Viltweg 1A 3295 KT's-Gravendeel NETHERLANDS

**Attorney of Record** Lawrence E. Abelman

**Type of Mark** TRADEMARK

**Register** SUPPLEMENTAL

**Live/Dead Indicator** LIVE

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**Typed Drawing**

<b>Word Mark</b>	BRINKMANN PUMPS
<b>Goods and Services</b>	IC 007. US 013 019 021 023 031 034 035. G & S: pumps for use in cooling and lubricating machinery, namely, immersion pumps, pressure boosting pumps, suction pumps, centrifugal pumps and high-pressure screw pumps. FIRST USE: 19980200. FIRST USE IN COMMERCE: 19980200
	IC 011. US 013 021 023 031 034. G & S: coolant recovery systems, comprising pumps. FIRST USE: 19980200. FIRST USE IN COMMERCE: 19980200
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	75222845
<b>Filing Date</b>	January 8, 1997
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Supplemental Register Date</b>	September 14, 1998
<b>Registration Number</b>	2217974
<b>Registration Date</b>	January 12, 1999
<b>Owner</b>	(REGISTRANT) K.H. Brinkmann GmbH & Co. KG DBA BRINKMANN PUMPEN CORPORATION FED REP GERMANY Friedrichstrasse 2 Werdohl FED REP GERMANY D-58791
<b>Attorney of Record</b>	GEORGE R REPPER
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PUMPS" APART FROM THE MARK AS SHOWN
<b>Type of Mark Register</b>	TRADEMARK SUPPLEMENTAL
<b>Affidavit Text</b>	SECT 8 (6-YR). SECTION 8(10-YR) 20081014.
<b>Renewal</b>	1ST RENEWAL 20081014

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## **APPENDIX G**

Subsisting Third-Party Registrations  
Cited in ¶ 28 of Applicant's Answer Which  
Issued on the Principal Register

<b>Mark</b>	<b>Registration No.</b>	<b>Issuance Date</b>	<b>Goods/Services</b>
BRINKSTER	3,777,594	April 20, 2010	Computer software development; web site hosting services; and domain name registration services
THINK BRINK	3,678,261	September 8, 2009	Children's books
BRINK INDUSTRIES	3,670,479	August 18, 2009	Hooded sweatshirts, knit shirts, long-sleeved shirts, polo shirts, shirts, pants, board shorts, short sleeved shirts, shorts, sweatbands, hats, beanies, jackets, belts, socks, sweaters, vests, and ties
BRINK THINKING	3,655,734	July 14, 2009	Broadcasting of radio and television programmes, and conducting workshops and seminars in innovation for business and entrepreneurship
BRINKER BAROMETER	3,638,678	June 16, 2009	Providing online newsletters in the field of investment
COUPLES ON THE BRINK	3,523,665	October 28, 2008	Intensive marriage/couples counseling services
TENBRINK	3,505,979	September 23, 2008	Wines
BRINK'S BODY BUILDING REVEALED	3,440,166	June 3, 2008	Downloadable electronic publications in the nature of books in the field of health, wellness, fitness, body building, weight loss, nutrition, and nutritional supplements
HANS BRINKER & Design	3,380,512	February 12, 2008	Flower bulbs, perennials and living plants
BRINK	3,365,045	January 8, 2008	Advertising, marketing and promotion services, business, business consultation and management regarding

			marketing activities and launching of new products
BRINKER CAPITAL	2,842,231	May 18, 2004	Investment consulting services for financial advisors and their clients asset allocation and portfolio construction; financial research, namely research and financial analysis of investment managers' performance and investment firms for others; financial analysis and consultation, namely monitoring status of investments and consulting others regarding same; providing financial information on investment and investment performance; asset management services; managed account investment services; mutual fund investment services; providing information featuring financial decision-making and financial investment research by electronic means or the Internet; providing financial planning and investment strategy information and analysis services and providing brokerage account and investment account information by electronic means or the Internet; providing financial planning and investment strategy information and analysis services and providing brokerage account and investment account information by electronic means or the Internet; providing financial planning and investment strategy

			information by electronic means or the Internet
BRINKMANN	2,671,114	January 7, 2003	Laboratory instruments namely [ anti-vibration tables,] bottle top dispensers for dispensing measured amounts of liquid, colorimeters, digital burets, dry ice traps, hot plates stirrers, magnetic stirrers, software for titration analyses for use in the laboratory; autoclaves; preventive maintenance and repair of laboratory instruments and apparatus for scientific research and laboratories; and testing, analyses and evaluation of the goods of others for the purpose of certification, and calibration
R. BRINKLEY SMITHERS AWARD	2,963,004	June 21, 2005	Entertainment services, namely, conducting award programs for honoring individuals who have made a significant contribution in the field of promoting public awareness of alcohol rehabilitation
R. BRINKLEY SMITHERS INSTITUTE	2,883,526	September 14, 2004	Human resources management consultation, namely, providing expertise to employers on the impact and effects of alcoholism Employees, and the efficacy of available programs for the treatment of alcoholism; educational services, namely conducting classes, lectures, seminars and workshops in the field of industrial alcoholism programs in the workplace, and distributing written materials used in connection therewith; and research in the field of the

			impact and effects of alcoholism, and the efficacy of treatment for alcoholism
BRINKS & Design	2,528,960	January 15, 2002	Real estate brokerage, real estate management and real estate investment services
THE BRINK & Design	2,140,043	March 3, 1998	Computer services, namely, providing an on-line magazine in the field of fictional and non-fictional articles
BRINKS HOFER GILSON & LIONE & Design	2,162,189	June 2, 1998	Providing intellectual property and technology-related legal services in the fields of patent, trademark, copyright, unfair competition, trade secret, entertainment, sports, licensing, franchising and antitrust matters
BRINKMANN CHEMSAVER	2,154,978	May 5, 1998	Bottle top dispensers for laboratory use
BRINK & Design	1,963,895	March 26, 1996	Mist eliminator comprising a packed fiber bed for the collection and removal of mist and fumes by such techniques as impaction, direct interception and diffusion and filters for the removal of impurities and the collection and recovery of solid particles from gaseous and liquid media, also useful as coalescers
BRINKER INTERNATIONAL & Design	1,690,466	June 2, 1992	Restaurant management services
BRINKER INTERNATIONAL	1,724,412	October 13, 1992	Restaurant management services
BRINK	1,713,973	September 8, 1992	Rusks, toast, gingerbread, bread, almond pastry, biscuits, waffles, cake and other pastry
B BRINKHAUS & Design	1,305,923	November 20, 1984	Readymade down pillows, and readymade down quilts
BRINK	981,617	April 2, 1974	Asphalt vent systems comprising a mist eliminator

			and a blower; oleum vent systems comprising a hydrolysis section wherein sulfur trioxide gas is converted to sulfuric acid; and a mist eliminator and a blower
BRINK	765,884	March 3, 1964	Filters for the removal of impurities and the collection and recovery of solid particles from gaseous and liquid media, also useful as coalescers
BRINK	741,617	December 4, 1962	Device comprising a packed fiber bed for the collection and removal of mist and fumes by such techniques as impaction, direct interception and diffusion