ESTTA Tracking number: **ESTTA397986**
Filing date: **03/14/2011**

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 SHEPPARD MULLIN RICHTER & HAMPTON LLP 333 SOUTH HOPE STREET, 48TH FLOOR LOS ANGELES, CA 90071 UNITED STATES gclark@sheppardmullin.com, shwang@sheppardmullin.com
Submission	Other Motions/Papers
Filer's Name	Susan Hwang
Filer's e-mail	shwang@sheppardmullin.com
Signature	/Susan Hwang/
Date	03/14/2011
Attachments	Brinkmann sur-reply.pdf (28 pages)(6791641 bytes)

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 SUR-REPLY TO OPPOSER'S MOTION FOR PARTIAL SUMMARY JUDGMENT TO DISMISS APPLICANT'S PRIOR REGISTRATION AFFIRMATIVE DEFENSE

Applicant The Brinkmann Corporation ("Brinkmann") hereby files this sur-reply to the reply filed by Opposer Brink's Network, Incorporated ("Brink's Network") in connection with its motion for partial summary judgment to dismiss Applicant's prior registration affirmative defense ("Motion"). Applicant Brinkmann is mindful that sur-replies are generally not considered by the Board, but respectfully submits that this sur-reply is necessary in order to address certain arguments made for the first time in Opposer's Reply that should have been submitted in Opposer's Motion. For the reasons set forth below, the Board should deny Opposer's Motion and instead grant summary judgment to Brinkmann.

I.

DISCUSSION

A. Registration, Not Use, is the Basis for the Modified Form of *Morehouse* Prior Registration Defense

In its Reply, Opposer Brink's Network argues for the first time that the prior registration defense asserted by Applicant Brinkmann against Opposer's dilution claim is flawed because Applicant Brinkmann is relying on prior registrations, as opposed to use, of marks in the registrations. It is Opposer's reasoning that is flawed, however, because Opposer is erroneously attempting to substitute a prong under the dilution analysis for the affirmative defense of prior registration. The very essence of the *Morehouse* prior *registration* defense is the existence of a prior *registration*, not *use*. The Board should pay no heed to Opposer's argument.

1. Prior Registration Affirmative Defense is a Different Issue From Evidence of Third Party Use of Same or Similar Mark

Opposer Brink's Network asserts that, "[i]n the context of Applicant's arguments contesting the present motion, the most relevant factor is set forth in § 43(c)(2)(B)(iii), namely, the extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark alleged to be diluted." Opposer's Reply at pp. 2-3. Opposer goes on to argue that this factor is "highly analogous" to factor 6 in the *DuPont* likelihood of confusion analysis, namely, the number and nature of similar marks in use on similar goods. *Id.* at p. 3; *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Opposer concludes that evidence of third party registration, as opposed to third party use, "is not an acceptable basis for challenging the strength or scope of protection of the plaintiff's mark because such registrations are not evidence that the third-party marks are in use". Opposer's Reply at p. 3.

Applicant Brinkmann readily acknowledges that an analysis of third party use of

the same or similar marks is a factor in the analysis of both likelihood of confusion and dilution.[1] However, analysis of this factor is *separate and apart from whether a prior registration exists* that negates Opposer's claim of any additional "harm" from registration of an additional mark containing the same term. *See Morehouse Mfg. Corp. v. J. Strickland & Co.*, 407 F.2d 881, 884, 160 USPQ 715, 717 (CCPA 1969). Otherwise, the affirmative defense would simply be subsumed within the analysis of likelihood of confusion or dilution.

In order to apply a prior registration defense, the key question is whether a prior registration exists, not whether there is use of the mark. *Hornblower & Weeks Inc. v. Hornblower Arpels Inc.*, 9 USPQ.2d 1221, 1226 (TTAB 1987) (*Morehouse* defense inapplicable where marks asserted in defense are not registered); *Land O'Lakes Inc. v. Hugunin*, 88 USPQ.2d 1957, 1959 (TTAB 2008) (prior registration must be in force and not cancelled or expired).

Opposer Brink's Network cannot have it both ways. If the consideration of third party use is "highly analogous" to a similar analysis in the dilution context, Opposer cannot then argue that the *Morehouse* prior registration defense is inapplicable in the dilution context.

2. Applicant Brinkmann's Own Prior Registrations

Opposer's argument regarding third party usage completely glosses over the fact that Applicant's *own* three prior registrations of the mark BRINKMANN are sufficient to uphold the prior registration defense. In this regard, Opposer's arguments regarding any alleged lack of evidence of third party usage is completely irrelevant. As stated above, it is the existence of a

---

[1] Contrary to Opposer Brink's Network's assertion, evidence of third party registrations, as opposed to use, is afforded significant weight in appropriate circumstances under the test for likelihood of confusion. Specifically, third party registrations can serve to negate a claim of exclusive rights in a term and can be evidence of descriptiveness or genericness of a term. *See, e.g., Sweats Fashions Inc. v Pannill Knitting Co. Inc.*, 4 USPQ.2d 1793, n. 1 (Fed. Cir. 1987); *In re National Data Corp.*, 224 USPQ 749, 751 (Fed. Cir. 1985).

registration, rather than use, that is the key consideration in a *Morehouse* prior registration defense. For the reasons set forth above, the Board should disregard Opposer Brink's Network's arguments.

B. Brink's Network is Correct that There is No Genuine Issue of Material Fact, Including Brinkmann's Use of its BRINKMANN Marks

Opposer Brink's Network states that there are no material facts in dispute with respect to Opposer's Motion, only a legal issue as to whether the prior registration affirmative defense asserted by Applicant Brinkmann is a legally cognizable defense to a dilution claim. Applicant Brinkmann agrees with Opposer's statement to the extent that Opposer does not dispute the existence of Applicant Brinkmann's three prior registrations of its BRINKMANN marks nor the existence of the various third party registrations of marks incorporating BRINK. Applicant disagrees, however, that the record does not reflect any evidence of use by Applicant of the marks registered in Applicant's prior registrations. To the extent that Opposer now bases its Motion on a purported lack of evidence of such actual use, summary judgment in favor of Opposer is inappropriate. *See Avon Products, Inc. v. MarCon, Ltd.*, 225 USPQ 977, 980 (TTAB 1985) (All doubts are resolved against the party moving for summary judgment).

As stated in section I.A., prior use of Applicant's marks and the third party marks is an unnecessary element under the prior registration defense, and therefore prior use is irrelevant to this Motion. If prior use was necessary, however, Applicant submitted a declaration establishing such use in opposition to the very motion that resulted in the Board's Order of March 16, 2009, relied on by Opposer as granting partial summary judgment dismissing Applicant's laches defense. *See* the declaration of Applicant's founder and president, J. Baxter Brinkmann, filed in opposition to Opposer's prior motion attached hereto as Exhibit A. Applicant asks the Board to take judicial notice of Mr. Brinkmann's prior declaration and to

consider it in opposition to Opposer's present Motion. If use is required, the declaration both rebuts Opposer's Motion and demonstrates that Applicant is entitled to summary judgment on this issue. Clearly there is no genuine issue of fact about either Applicant Brinkmann's registrations or use of the BRINKMANN marks.

C. Applicant Brinkmann is Not Precluded by Law of the Case Doctrine from Asserting Reg. Nos. 1,153730 and 2,779,986

In its Reply, Opposer Brink's Network argues that "law of the case doctrine is applicable only *until* final judgment has been entered in the case." Opposer's Reply at p. 9 (original emphasis). Opposer also argues that any error in the Board's Order of March 16, 2009 does not rise to the requisite level of "extraordinary circumstances" that would require the Board to revisit its previous decision.

Contrary to Opposer's assertion, law of the case doctrine only applies to final decisions, and not interlocutory decisions, such as a summary judgment motion. *See, e.g.*, *United States v. Wells*, 519 U.S. 482, 488 n. 4 (1997) ("In this context, the 'law of the case' doctrine is something of a misnomer. It does not counsel a court to abide by its own prior decision in a given case, but goes rather to an appellate court's relationship to the court of trial.") (citing 18 C. Wright, A. Miller, & E. Cooper, FEDERAL PRACTICE AND PROCEDURE § 4478 (1981)); *Aycock Engineering Inc. v. Airflite Inc.*, 90 USPQ.2d 1301, 1305 (Fed. Cir. 2009) (stating that "[registrant] misunderstands the law of the case doctrine, which simply does not apply to a denial of summary judgment" in holding that TTAB's determination of services on summary judgment does not preclude TTAB from later construing services differently).

Opposer Brink's Network is dead wrong to suggest that the Board must follow its March 16, 2009 Order in deciding the current summary judgment motion. The Board still has jurisdiction of this proceeding and it is free to revisit and overturn its interlocutory decision if it

concludes that the prior decision was incorrect and unjust. Furthermore, the Board has the authority to grant summary judgment in favor of the nonmoving party in cases where the Board finds no genuine issues of material fact but concludes that the nonmoving party rather than the moving party is entitled to judgment as a matter of law. *See Visa Int'l Serv. Ass'n v. Life Code Sys., Inc.*, 220 USPQ 740, 744 (TTAB 1983). And that is precisely what the Board should do in the present proceeding.

II.

CONCLUSION

Opposer's arguments regarding the prior registration defense and the law of the case doctrine are specious and should be disregarded. Applicant Brinkmann respectfully requests that the Board deny Opposer's motion for summary judgment and instead grant summary judgment in Brinkmann's favor dismissing Opposer's dilution claim.

Dated: March 14, 2011

Gary A. Clark
Susan Hwang
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

Exhibit A

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

DECLARATION OF J. BAXTER BRINKMANN UNDER 37 C.F.R. § 2.20

I, J. Baxter Brinkmann, hereby declare as follows:

1. I am the president of Applicant The Brinkmann Corporation ("Brinkmann"), a consumer products company based in Dallas, Texas, which I founded and which is named after me.

2. I make this declaration in connection with an opposition proceeding, No. 91164764, pending in the U.S. Patent and Trademark Office. Except as otherwise stated, I have personal knowledge of the facts set forth in this declaration and am competent to testify to those facts.

3. Brinkmann has used its trademark BRINKMANN on a variety of consumer products since 1975. For over 30 years, Brinkmann has continued to expand and invest in its use of the BRINKMANN mark. Over that time period, Brinkmann has expanded its product lines, sales, advertising, and distribution channels under the mark BRINKMANN throughout the United States and abroad.

4. On November 13, 1978, Brinkmann filed an application to federally register the trademark BRINKMANN. The application, Serial No. 73/193,053, was published on

September 16, 1980 and issued as Registration No. 1,153,730 on May 12, 1981. A true and correct copy of the registration issued by the U.S. Patent and Trademark Office showing both the current status of and current title to the registration is attached as Exhibit 1. The registered goods are "electrical extension cords, brackets, and electric connectors for use therewith," in International Class 9, with a date of first use of June 12, 1978 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, with a date of first use of August 24, 1978. Brinkmann is the owner of this registration and has taken all necessary steps to maintain it. No third party, including Brink's Network, ever opposed the application or has ever sought to cancel the registration. To the best of my knowledge, the registration is valid and subsisting, and I understand that it was declared "incontestable" over 20 years ago. Brinkmann has continuously used the mark BRINKMANN for the goods since 1978.

5. On October 11, 2000, Brinkmann filed an application to federally register the trademark BRINKMANN BACKYARD KITCHEN. The application, Serial No. 76/145,244, was published on October 22, 2002 and issued as Registration No. 2,779,986 on November 4, 2003. A true and correct copy of the registration issued by the U.S. Patent and Trademark Office showing both the current status of and current title to the registration is attached as Exhibit 2. The registered goods are "combined outdoor grill and kitchen appliance units comprised of gas grills, sinks and coolers," with a date of first use of October 31, 2000. Brinkmann is the owner of this registration and has taken all necessary steps to maintain it. No third party, including Brink's Network, ever opposed the application or has ever sought to cancel the registration. To the best of my knowledge, the registration is valid and subsisting. Brinkmann has continuously used the mark BRINKMANN BACKYARD KITCHEN for the goods since 2000.

6. On January 17, 2003, Brinkmann filed the application that is the subject of this proceeding, Serial No. 76/483,115, for the trademark BRINKMANN in multiple classes to cover its then-existing lines of goods. The application was published for opposition on October 5, 2004. The current description of goods with dates of first use are set forth in the following table:

Class	Goods	Date of First Use in Class
4	Charcoal briquettes and wood chunks for use in smoking and grilling food.	Jan. 1979
6	Metal birdbaths; metal compost bins, metal garden hose hangers, and metal tubs and metal flashlight key rings.	Jan. 1979
7	Vacuum cleaners and accessories, namely, brushes and suction nozzles for vacuum cleaners, vacuum cleaner hoses and hose adapters, filters, filter bags for vacuum cleaners, vacuum cleaner extension wands, vacuum cleaner crevice tools, vacuum cleaner dollies, and accessory kits comprising vacuum cleaner brushes, suction nozzles, hoses, vacuum cleaner extension wands and vacuum cleaner crevice tools.	Jan. 1990
8	Hand tools, namely, protractor saw guides and multi-purpose hand tools comprising pliers, knife blades, screwdrivers, hole punches, bottle openers, can openers, fish scalers and files in one unit; hand utensils, namely, meat hooks.	Jan. 1990
9	Home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets; batteries; wall mount brackets for battery chargers and flashlight; cooking thermometers; electrical extension cords; electric connectors; electric converters; electronic mineral and metal detectors, flashlight and spotlight accessories sold together or separately, namely, transmitters, lighter plugs and filter caps.	June 12, 1978
11	Barbecue grills and smokers, gas cookers and gas fryers, combined outdoor gas grills comprised of a grill, side burner, hanging rack in a warming area, kitchen sink and ice bucket; replacement parts and accessories for barbecue grills and smokers and gas cookers and gas fryers sold separately, namely, charcoal lighters and charcoal starters; lighting products, namely, flashlights, spotlights, electric and fluorescent lanterns, rechargeable lights and spotlights, low voltage and solar-powered lights, electric night lights for outdoor work use, underwater and buoy lights used for fishing; flashlight and spotlight replacement parts and accessories sold together, namely, replacement bulbs, nylon and leather carry cases and holster and belt holders; flashlight and spotlight replacement parts and accessories sold separately, namely, replacement bulbs; replacement parts and accessories for barbecue grills, smokers, gas cooker and gas fryers sold separately, namely, drip pans, racks, grates, charcoal pans and water pans; candle lanterns; and portable electric fans.	Sept. 1, 1975
12	Wheelbarrows and hand carts for carrying weighted objects and dollies.	Jan. 1990
21	House wares and garden accessories, namely, pails, rinsing tubs, dust pans, metal pans for use as drain pans, watering cans, trash cans, bird feeders.	Aug. 1992
30	Seasonings and spices.	Jan. 1979

For each of the goods in the table above, Brinkmann has continuously used the mark BRINKMANN from adoption to the present.

7. Brinkmann's association of its BRINKMANN mark with "security" products first began in 1975. Brinkmann had previously acquired a company called Q-Beam Corporation that made hand-held spotlights and other specialty lights. In 1975 Brinkmann introduced a spotlight that was called the "Q-Beam Security Special." It was advertised for use with policemen, state troopers and other security personnel. A true and correct copy of Brinkmann's advertisement for the spotlight from 1975 is attached as Exhibit 3. Packaging for the spotlight clearly showed both the BRINKMANN mark and "Q-BEAM SECURITY" in close proximity. A true and correct copy of product labels for the spotlight is attached as Exhibit 4. Brinkmann advertised its spotlight as the "Security Special" for a number of years.

8. In the early 1980s, Brinkmann also advertised its portable lights for use with "Home Security" and "For Safety . . . Security . . .Convenience." A true and correct copy of the cover of Brinkmann's price list from 1981 is attached as Exhibit 5.

9. In about 1984, Brinkmann began using its BRINKMANN mark for rechargeable lights that were advertised as "rechargeable security lights." A true and correct copy of the cover and the relevant page from Brinkmann's July 26, 1984 price list is attached as Exhibit 6.

10. In 1989, Brinkmann introduced "home security system" products including the motion sensitive lights, detectors, receivers, transmitters, and adapters, which are at issue in this proceeding, under the BRINKMANN mark and has continuously used its mark for such products to date.

11. In all the years that Brinkmann has been using its mark BRINKMANN, Brink's Network never objected to Brinkmann's use of the mark on any products, including security-related products, prior to the time that Brinkmann's pending application was published for opposition.

12. Brinkmann will suffer material prejudice if, after over 30 years of use and nearly 30 years of registration of its mark BRINKMANN, Brink's Network is allowed to

challenge Brinkmann's registration of BRINKMANN. Brinkmann has adopted and used BRINKMANN as its house mark on nearly every product it makes and sells. Most Brinkmann products have a secondary or product specific mark, but the mark BRINKMANN is the one mark by which nearly all Brinkmann products are known and recognized in the marketplace. Brinkmann has invested an enormous amount of time, effort and money in promoting the mark BRINKMANN through use of it on or in connection with its products, catalogs, literature, and packaging, in advertising, at trade shows, and on its website. This has resulted in a valuable business and goodwill associated with the BRINKMANN mark.

13. From the first introduction of the mark BRINKMANN in 1975 to the present, Brinkmann's business has continued to grow, as demonstrated by steady expansion of its product lines under its BRINKMANN mark and by steady growth in the amount of sales, advertising and channels of trade for its consumer products under the BRINKMANN mark. All of this has occurred in the absence of any objection from Brink's Network.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

Date: September 19th, 2008

By: J. Baxter Brinkmann
J. BAXTER BRINKMANN

Exhibit 1

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

September 16, 2008

THE ATTACHED U.S. TRADEMARK REGISTRATION *1,153,730* IS CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF *20* YEARS FROM *May 12, 1981*
1st* RENEWAL FOR A TERM OF *10* YEARS FROM *May 12, 2001
SECTION 8 & 15
LESS GOODS
SAID RECORDS SHOW TITLE TO BE IN:
THE BRINKMANN CORPORATION
A CORPORATION OF TEXAS

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office

Gloria A. Murray
GLORIA A MURRAY
Certifying Officer

Int. Cls.: 9 and 11

Prior U.S. Cls.: 21, 26 and 34

United States Patent and Trademark Office

Reg. No. 1,153,730
Registered May 12, 1981

TRADEMARK
Principal Register

BRINKMANN

The Brinkmann Corporation (Texas corporation)
4215 McEwen Rd.
Dallas, Tex. 75240

For: ELECTRICAL EXTENSION CORDS, BRACKETS, ~~RADAR DETECTORS, AND ELECTRONIC METAL DETECTORS, HEAD PHONES AND SEARCH COILS,~~ AND ELECTRIC CONNECTORS FOR USE THEREWITH, in CLASS 9 (U.S. Cls. 21 and 26).

First use Jun. 12, 1978; in commerce Jun. 12, 1978.

For: CHARCOAL FIRED AND ELECTRIC ROASTING, GRILLING AND BARBECUE COOKERS FOR DOMESTIC USE AND PORTABLE ELECTRIC LIGHTS AND FILTERS, AND REPLACEMENT LAMPS, in CLASS 11 (U.S. Cls. 21 and 34).

First use Aug. 24, 1978; in commerce Aug. 24, 1978.

Ser. No. 193,053, filed Nov. 13, 1978.

ABRAM I. SACHS, Primary Examiner

Exhibit 2

1719551

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

September 16, 2008

THE ATTACHED U.S. TRADEMARK REGISTRATION *2,779,986* IS CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF *10* YEARS FROM *November 04, 2003*

SAID RECORDS SHOW TITLE TO BE IN:

THE BRINKMANN CORPORATION
A CORPORATION OF TEXAS

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office

Gloria A. Murray
GLORIA A MURRAY
Certifying Officer

Int. Cl.: 11

Prior U.S. Cls.: 13, 21, 23, 31, and 34

Reg. No. 2,779,986

United States Patent and Trademark Office

Registered Nov. 4, 2003

TRADEMARK
PRINCIPAL REGISTER

BRINKMANN BACKYARD KITCHEN

BRINKMANN CORPORATION, THE (TEXAS CORPORATION)
4215 MCEWEN ROAD
DALLAS, TX 75244

FOR: COMBINED OUTDOOR GRILL AND KITCHEN APPLIANCE UNITS COMPRISED OF GAS GRILLS, SINKS AND COOLERS, IN CLASS 11 (U.S. CLS. 13, 21, 23, 31 AND 34).

FIRST USE 10-31-2000; IN COMMERCE 10-31-2000.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BACKYARD KITCHEN", APART FROM THE MARK AS SHOWN.

SN 76-145,244, FILED 10-11-2000.

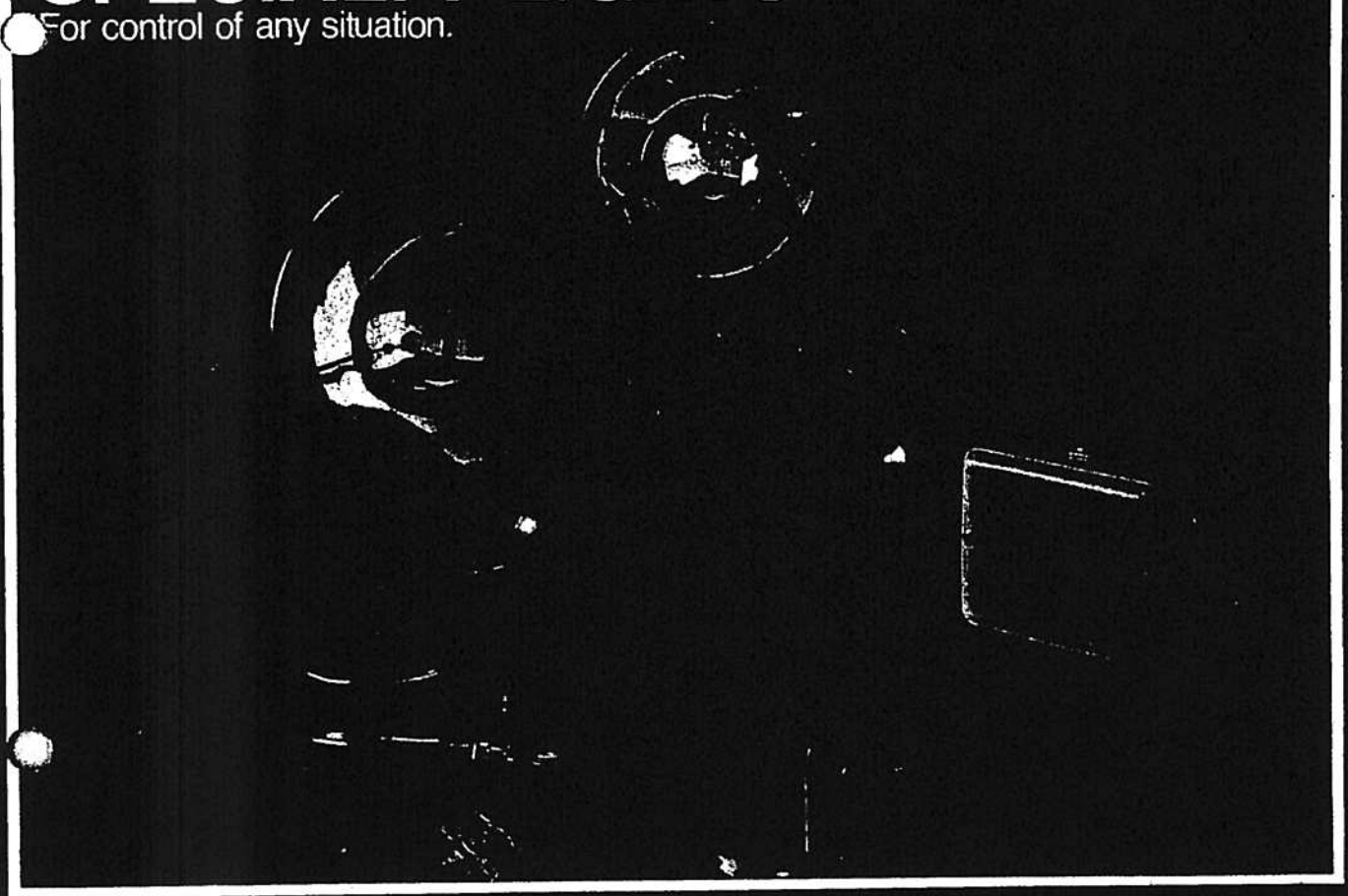
RAUL CORDOVA, EXAMINING ATTORNEY

Exhibit 3

Q-Beam®

SPECIALTY LIGHTS

For control of any situation.



Magnetic Base
Q-Beam's Magnetic Base Light fastens to any steel or iron surface with the staying power only a 50-pound-pull magnet can provide. Mounted on rust-proof swivel base, features 180 degree vertical, 360 degree horizontal swivel. Thousands of agricultural, industrial, emergency and recreational applications. A must when steady light is required. Available in 200,000/100,000 candlepower Spot/Flood and 200,000 candlepower Super Spot models. Complete with 15-foot heavy-duty insulated cord. Plugs into any cigarette lighter. Operates on any 12-volt DC source.

Security Special
The Q-Beam Security Special is a rugged 200,000 candlepower high intensity hand light with special features for policemen, state troopers, firemen, game wardens, and other security personnel. Momentary switch is designed to operate only when depressed. Perfect for use around warehouses, docks, office buildings, stores. Accessories include amber snap-on lens for caution light and red snap-on lens for stop warnings. Blue filter and blinker model (Security Deluxe) also available. Other options include separate adapter unit for use when cigarette lighter not available as power source.

Varmint Special
The 200,000 candlepower light for nighttime hunters. Red filter won't spook wild animals. Lets you focus light directly on wily predators as they answer your calls. Exclusive shooters' hood eliminates glare and protects night vision. Removable red filter permits use as standard Super Spot. 15-foot heavy-duty cord with cigarette lighter plug.

Moonliter™
A mini-light that packs a powerful punch. Dual bulbs for greater illumination. A heavy-duty rheostat lets you control illumination. A perfect companion for night fishing (soft light) or fixing flat tires (full light). Equipped with translucent lens. Insect-repelling amber lens optonal. Moonliter has stainless steel handle for hanging and suction cup base for mounting. Moonliter features 8-foot cord with battery clips for direct 12-volt battery tie-in or cigarette lighter plug.

ITEM	MODEL	DESCRIPTION
Magnetic Base	1500	Black, 3¼ lbs., Super Spot W/magnet base swivel, 15-ft. cord/cigarette lighter plug
	1501	Black, 3¼ lbs., Spot/Flood W/magnet base swivel, 15-ft. cord/cigarette lighter plug
Security Special	1502	Black, 3¼ lbs., Super Spot W/magnet base flasher, 2 filters, 15-ft. cord/cigarette lighter plug
	1503	Black, 3¼ lbs., Super Spot W/hand grip, momentary switch, 15-ft. cord/ cigarette lighter plug
	1504	Black, 2¾ lbs., Super Spot Deluxe W/hand grip, flasher, 2 filters, 8-ft. coil cord/cigarette lighter plug
Varmint Special	1505	Black, 3 lbs., W/hood and red filter, 15-ft. cord with cigarette lighter plug
Moonliter	1506	Black, 3/4 lbs., W/rheostat and dual bulbs, 8-ft. cord with battery clips
	1507	Black, 3/4 lbs., W/rheostat and dual bulbs, 8-ft. cord with cigarette lighter plug

Exhibit 4

BRINKMANN
Q-BEAM®
SECURITY
SUPER SPOT®

BRINKMANN
Q-BEAM®
SECURITY
SUPER SPOT®

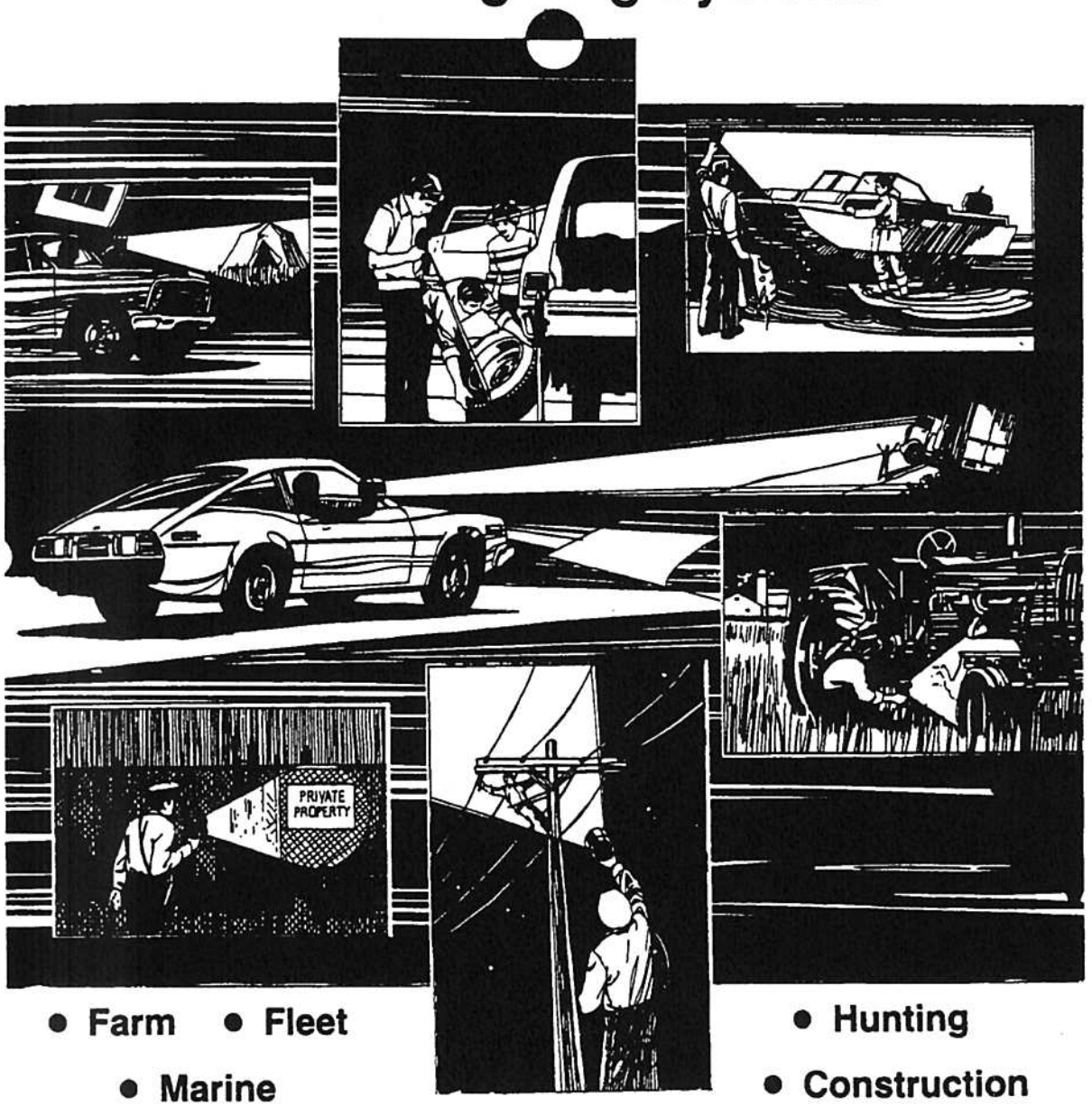
BRINKMANN
Q-BEAM®
SECURITY
SUPER SPOT®

Exhibit 5

K Hamm — W/D list. How site cost.

BRINKMANN® **1981**

Q-BEAM® — The Ultimate in High-Intensity Portable Lighting Systems



- Farm
- Fleet
- Hunting
- Marine
- Construction
- Off-Road
- Home Security
- 4x4
- Industrial
- Auto Utility
- D.I.Y.
- Emergency
- Camping

FOR SAFETY...SECURITY...CONVENIENCE

Exhibit 6

BRINKMANN

CONFIDENTIAL DISTRIBUTOR PRICE LIST **JULY 26, 1984**

Karen's copy

Q-BEAM®

MAXLITE™

VOYAGER™

TROUBLE SHOOTER™

SMOKE 'N PIT®

Small Fry™

Sportsman Smoker™

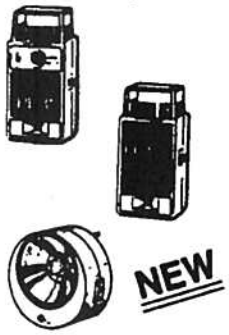
SMOKE 'N GRILL®

country cooker™

treasure SENSOR®

BRINKMANN® puts Adventure and Excitement into Your Sales Program

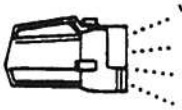
BRINKMANN® RECHARGEABLE SPOTLIGHTS AND 6-VOLT LANTERNS AND ACCESSORIES

ITEM	MODEL	DESCRIPTION	CASE PACK	WHSLE.	DISTR.
Rechargeable Security Lights 	827-0391-0	PF3, Rechargeable 5-in-1 Security Light, for use as power failure light, emergency flashlight, 360° area light and glowing night light. Complete with audio alert. 2-cell NiCad battery system. U.L. listed. Master pack: (6) 7½ × 9 × 7½", wt. 2 lbs. 6 oz. (.29 cu. ft.)	6	16.76	13.97
	827-0360-0	PF2, Rechargeable 4-in-1 Security Light, for use as power failure light, emergency flashlight, 360° area light and glowing night light. 2-cell NiCad battery system. U.L. listed. Master pack (6) 7½ × 14½ × 7½", wt. 3 lbs. (.47 cu. ft.)	6	13.16	10.97
	827-0365-0	3-in-1 Rechargeable Safety Light, for use as power failure light, emergency flashlight and glowing night light. 2-cell NiCad battery system. U.L. listed. Master pack: (6) 8½ × 9 × 8½", wt. 3 lbs. (.38 cu. ft.)	6	11.96	9.97
6-Volt Fluorescent Lanterns	827-0603-0	F-1F Fluorescent Lantern *with warning system*. Black rugged case. Unbreakable lens. Steady or flasher light. Includes set of emergency messages. Uses 1 6-volt lantern battery.	4	29.96	24.97
	827-0600-0	F-1 Fluorescent Lantern. Black rugged case. Unbreakable lens. Weather-protected switch. Versatile handle: hang, carry or wall mount. Unique and economical power system; uses only 1 6-volt lantern battery.	4	17.96	14.97
	827-0621-0	Same as above with black/ultraviolet light. Master pack: (4) 7½ × 14¼ × 10¼", wt. 6 lbs. 4 oz. (.63 cu. ft.)	4	23.96	19.97
Accessories	450-9920-0	Bulb Cap Set, red and amber.	1	1.16	.97
	450-9700-0	Adjustable Shoulder Strap with detachable snaps.	1	1.32	1.10
	119-9006-0	Amber Bug Lens for F-1 Fluorescent Lantern.	1	1.68	1.40
	450-9716-0	Custom Lantern Bracket with screws.	1	1.50	1.25
	190-9102-0	Heavy Duty Mailer Carton.	1	.48	.40
	070-9150-0	6-Volt Lantern Battery with spring terminals	1	2.88	2.40
	070-9151-0	6-Volt Heavy Duty Lantern Battery with spring terminals.	1	3.72	3.10

KEY TO SELLING MORE BRINKMANN® RECHARGEABLE SPOTLIGHTS AND 6-VOLT LANTERNS

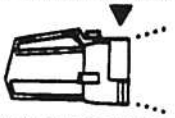
AC & DC RECHARGEABLE
Built-in AC & DC chargers allow recharge wherever you are!

TOUGH AND RUGGED
High density polyethylene case.



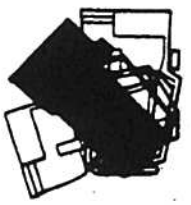
MOST POWERFUL BEAM
using a 6-volt lantern battery. Focus adjusts from spot to flood on all models.

IT'S WEATHERPROOF



NON-GLARE SHIELD

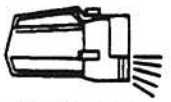
120° SWIVEL STAND
Available on many models
Heavy-gauge metal bracket is chrome-plated to resist rust and corrosion. Adds versatility, because it holds the lantern stable in any position with a 120° arc. Stand is removable.



NO RUST OR CORROSION
Silvered switch contacts resist acids and alkalies.

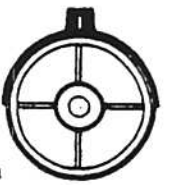
AIR SPACE SURROUNDING BATTERY
Eliminates condensation inside case. Operates in colder temperatures.

IT FLOATS
"O" ring sealed switch and pressure fitted dim



LENS SEAL GLOWS

SUPER II REFLECTOR
The most dramatic change in a lantern design in 50 years. The "SUPER II" system features a **COMPUTER DESIGNED PARABOLIC REFLECTOR WITH A BOOSTER.** Its super efficient beam actually produces **50% MORE CANDLEPOWER** for a much brighter beam.



CONFIDENTIAL

BM001838

CERTIFICATE OF SERVICE

This is to certify that I have this day, March 14, 2011, caused to be served a copy of the foregoing APPLICANT BRINKMANN'S SUR-REPLY TO MOTION FOR PARTIAL SUMMARY JUDGMENT DISMISSING APPLICANT'S PRIOR REGISTRATION AFFIRMATIVE DEFENSE 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 20004-2402.

Susan Hwang