

ESTTA Tracking number: **ESTTA76555**

Filing date: **04/17/2006**

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

Proceeding	91170274
Party	Defendant Target Brands, Inc. Target Brands, Inc. TPS-3165 1000 Nicollet Mall Minneapolis, MN 55403
Correspondence Address	James R. Steffen Faegre & Benson LLP 2200 Wells Fargo Center 90 South Seventh Street Minneapolis, MN 55402
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	James R. Steffen
Filer's e-mail	trademarkmpls@faegre.com
Signature	/James R. Steffen kad/
Date	04/17/2006
Attachments	327501 Motion to Dismiss.pdf (6 pages)(202373 bytes)

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

In the Matter of Application Serial No. 78/508,108
For the Mark: Bullseye Design
Filed: October 29, 2004
Published: November 22, 2005

CENTRAL MFG. INC.,)
a Delaware corporation,)
)
 Opposer,)
)
v.)
)
TARGET BRANDS, INC., a Minnesota)
corporation,)
)
 Applicant.)

Opposition No. 91170274

**APPLICANT’S MOTION TO
DISMISS FOR FAILURE TO
STATE A CLAIM**

Concurrent with the filing of its Answer, applicant Target Brands, Inc. respectfully moves pursuant to 37 C.F.R. § 2.116 and Fed. R. Civ. P. 12(b)(6) to dismiss the Notice of Opposition of Central Mfg. Inc. (the “Notice”), for failure to state a claim upon which relief can be granted.

BACKGROUND AND ARGUMENT

Opposer’s Notice is directed only to goods in International Class 28. *See* Notice, ¶ 1. *See also* Notice, at p. 8 (noting enclosure of \$300 fee to oppose the application for a single class). The Notice does not oppose registration with respect to goods or services in any International Class other than International Class 28.

While Target Brands’ subject multi-class application did at one time include a request for registration with respect to “bean bags” in International Class 28, neither “bean bags” nor any other goods within International Class 28 were a part of the subject application on March 21, 2006, the date Leo Stoller signed the Notice.

Indeed, “bean bags in International Class 28” were deleted from the identification by Target Brands’ February 9, 2006 Amendment After Publication. For the Board’s ease of reference, a copy of that February 9, 2006 Amendment After Publication is attached, together with a copy of the Examining Attorney’s February 27, 2006 Note To The File concerning the same.

In these circumstances, there is no relief that can be granted with respect to the single International Class against which the Notice is directed, and the Notice should be dismissed pursuant to 37 C.F.R. § 2.116 and Fed. R. Civ. P. 12(b)(6) for failure to state a claim.

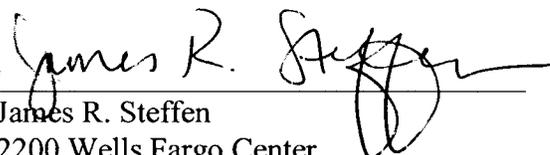
REQUEST FOR SUSPENSION

Consistent with 37 C.F.R. § 2.127(d), Target Brands respectfully requests that, pending ruling on the foregoing motion to dismiss, all matters and proceedings in the opposition not germane to the motion to dismiss be suspended.

No fees are seen to be due in connection with the filing of this motion to dismiss for failure to state a claim; however, if it is determined that any such fees are due, the Commissioner may charge them to Deposit Account No. 06-0029.

Dated: April 17, 2006

FAEGRE & BENSON LLP,
as Attorneys for Applicant

By 
James R. Steffen
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Telephone: (612) 766-7000
Facsimile: (612) 766-1600



UNITED STATES | ENGLAND | GERMANY | CHINA

FACSIMILE TRANSMISSION

FROM: James R. Steffen, Esq. TELEPHONE: 612-766-8508
 EMAIL: JRSteffen@faegre.com

DATE: February 9, 2006 TIME: 2:55 p.m. (Minneapolis)

NUMBER OF PAGES (including this page): 2 F&B FILE: 330425 REC: 0390

TO: Robert H. Coggins TELEPHONE: 571/272-9467
 U.S. Patent and Trademark Office FAX: 571/273-9115

MESSAGE

Applicant: Target Brands, Inc.	Examiner: Robert H. Coggins
Serial No. 78/508,108	Law Office: 115
Filed: October 29, 2004	
For Mark: BULLSEYE DESIGN	Docket No. 53258-330425

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL THE FAX CENTER AT 612-766-1650 OR JESSICA RASMUSEN AT 612-766-8543.

THIS TELECOPY IS INTENDED ONLY FOR THE USE OF THE PERSON TO WHOM IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

2200 WELLS FARGO CENTER | 90 SOUTH SEVENTH STREET | MINNEAPOLIS MINNESOTA 55402-3901

TELEPHONE 612-766-7000 | FACSIMILE 612-766-1600 | WWW.FAEGRE.COM

PRINCIPAL REGISTER

TRADEMARK

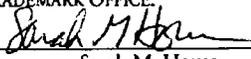
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Target Brands, Inc. Serial No. 78/508,108 Filed: October 29, 2004 For Mark: BULLSEYE DESIGN	Examiner: Robert H. Coggins Law Office: 115 Docket No. 53258-330425
---	--

Box Responses NO FEE
 Commissioner for Trademarks
 P. O. Box 1451
 Alexandria, VA 22313-1451

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY THAT, ON FEBRUARY 9, 2006, THIS
 CORRESPONDENCE IS BEING FACSIMILE TRANSMITTED TO THE U.S.
 PATENT AND TRADEMARK OFFICE.


 Sarah M. House

AMENDMENT AFTER PUBLICATION

Applicant refers to the above-identified application, which was published for opposition on November 22, 2005. No fee is deemed necessary. Should any fee be required, the Commissioner is authorized to charge our Deposit Account No. 06-0029 and notify us of the same.

AMENDMENTS

Please delete "bean bags in International Class 28."

REMARKS

Applicant respectfully requests entry of the above-referenced amendment. Applicant submits that the amended identification of goods falls within the scope of the originally filed application. Since Applicant is deleting items in the existing identification, it believes that this amendment is proper, and re-publication is unnecessary. The Examiner is invited to contact the undersigned attorney if there are any questions regarding this filing.

Respectfully Submitted,
 TARGET BRANDS, INC.

By:


 James R. Steffen
 FAEGRE & BENSON LLP
 2200 Wells Fargo Center
 90 South Seventh Street
 Minneapolis, MN 55402-3901
 612/766-8508

Dated: February 9, 2006

M2:20773809.01

Document Description: **Notation to File**

Mail / Create Date: **27-Feb-2006**



NOTE TO THE FILE

SERIAL NUMBER: 78508108

DATE: 02/27/2006

NAME: rcoggins

NOTE:

_ Changed Tradeups to delete class 28 per 2-9-06 fax.

This document may be displayed as a PDF file containing images without text. You may view online or save the entire document using the file download icon to the upper right. [[required PDF viewer](#)] [FAQ: Are you seeing only the first page of this PDF document?](#)

If you need help:

- *Call the Trademark Assistance Center at 571.272.9250 for help on trademark matters.*
- *Send questions about USPTO programs to the [USPTO Contact Center \(UCC\)](#).*
- *If you have technical difficulties or problems with this application, please e-mail them to [Electronic Business Support Electronic Applications](#) or call 1 800-786-9199.*

CERTIFICATE OF SERVICE

I, Kim A. Dye, do hereby certify that a true and correct copy of the above and foregoing document has been forwarded by United States mail, first class, postage prepaid, to:

Leo Stoller
Central Mfg. Inc.
7115 W. North Avenue #272
Oak Park, IL 60302

as representative of Opposer, this 17th day of April, 2006.

Kim A. Dye

M2:20790257.01