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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
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Attachments	327501 Reply Brief in Support of Motion to Dismiss.pdf (3 pages)(94173 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 REPLY BRIEF IN
SUPPORT OF MOTION TO
DISMISS FOR FAILURE TO
STATE A CLAIM**

Pursuant to 37 C.F.R. § 2.127(a) and consistent with TBMP § 502.02(b), applicant Target Brands, Inc. respectfully submits for the Board’s consideration in its discretion this reply brief in support of Target Brands’ motion 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.

ARGUMENT

Contrary to Leo Stoller’s arguments on Opposer’s behalf, the examining attorney properly entered Target Brands’ February 9, 2006 post-publication amendment deleting “bean bags in International Class 28” from the identification. *See* TMEP § 1505.01(a) (“If an application proposes to amend the identification of goods and services after publication by *restricting* or *deleting* items in the existing identification, and the amendment is otherwise proper, the Office

will approve the amendment, and the mark will not be republished.”); 37 C.F.R. § 2.84(b) (“After publication, but . . . before the notice of allowance in an application under section 1(b) of the Act is printed, an application that is not the subject on an *inter partes* proceeding before the Trademark Trial and Appeal Board may be amended if the amendment does not necessitate republication of the mark or issuance of an Office action.”)

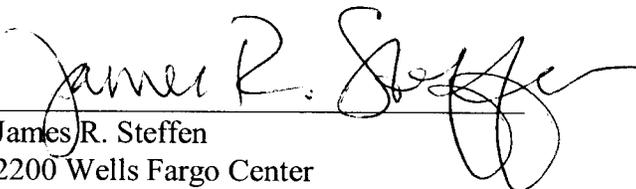
Contrary to Leo Stoller’s arguments on Opposer’s behalf, the filing of a request for extension of time to oppose does *not* commence an *inter partes* proceeding and does not deprive the examining attorney of the ability to act on a post-publication amendment. *See* § 1505.02 (c) (“An amendment of an application that is under an extension of time to file an opposition should be processed in accordance with the procedures [otherwise in effect before an opposition is filed]. The Director retains jurisdiction of such an application until an opposition is actually filed.”); 37 C.F.R. § 2.101(a) (“An opposition proceeding is commenced by filing a timely opposition, together with the required fee, in the Office.”)

Because all goods in International Class 28 were deleted from the subject application by Target Brands’ February 9, 2006 post-publication amendment, and because Opposer’s March 21, 2006 Notice is directed only to goods in International Class 28, 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.

No fees are seen to be due in connection with the filing of this reply brief in support of Target Brands' 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 24, 2006

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CERTIFICATE OF SERVICE

I, Kim 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 24th day of April, 2006.



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