ESTTA Tracking number: **ESTTA97108**
Filing date: **08/30/2006**

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

Proceeding	91171959
Party	Defendant A&A GLOBAL INDUSTRIES, INC. A&A GLOBAL INDUSTRIES, INC. 17 Stenersen Lane Cockeysville, MD 21030
Correspondence Address	GEORGE A. METZENTHIN CAHN & SAMUELS, LLP 2000 P ST NW, STE 200 WASHINGTON, DC 20036
Submission	Answer
Filer's Name	George A. Metzenthin
Filer's e-mail	George.Metzenthin@cahnandsamuels.com,Maurice.Cahn@cahnandsamuels.com
Signature	/George A. Metzenthin/
Date	08/30/2006
Attachments	answer.pdf (7 pages)(67520 bytes)

Atty. Docket No.
274.0121OPP

BOXTTAB
NO FEE

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

IMPACT CONFECTIONS, INC.

Opposer/Plaintiff

vs.

OPPOSITION NO: 91171959

A&A GLOBAL INDUSTRIES, INC.

Applicant/Defendant

ANSWER

Applicant/Defendant A&A GLOBAL INDUSTRIES, INC., the owner of the application identified in the heading of this document, in response to the communication from the U.S. Patent & Trademark Office dated July 21, 2006 instituting the Opposition proceeding, answers the Notice of Opposition as follows:

1. Applicant/Defendant admits that it is the applicant/record owner of application serial no. 78/734,101 for candy in International Class 30 and otherwise denies the allegations of paragraph 1.

2. Applicant/Defendant does not have sufficient information to admit or deny the allegation of the address of the Opposer/Plaintiff in paragraph 2 and leaves Opposer/Plaintiff to its proofs and denies the remaining allegations of paragraph 2.

3. Applicant/Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 3, and

the allegations involving legal issues require no response and accordingly are denied.

4. Applicant/Defendant denies the factual allegations contained in paragraph 4, and the allegations involving legal issues require no response and accordingly are denied.

5. Applicant/Defendant admits that counsel for Opposer/Plaintiff sent a letter dated May 25, 2006 and otherwise denies the remaining factual allegations contained in paragraph 5.

6. Applicant/Defendant denies the factual allegations contained in paragraph 6, and the allegations involving legal issues require no response and accordingly are denied.

7. Applicant/Defendant denies the factual allegations contained in paragraph 7, and the allegations involving legal issues require no response and accordingly are denied.

8. Applicant/Defendant admits that it seeks to register the mark GLO POPCIFIER for candy in International Class 30. Applicant/Defendant denies the remaining factual allegations contained in paragraph 8, and the allegations involving legal issues require no response and accordingly are denied.

9. Applicant/Defendant denies the factual allegations contained in paragraph 9, and the allegations involving legal issues require no response and accordingly are denied.

10. Applicant/Defendant denies the factual allegations contained in paragraph 10, and the allegations involving legal issues require no response and

accordingly are denied.

First Affirmative Defense

11. The Notice of Opposition fails to state a claim upon which relief can be granted.

Second Affirmative Defense

12. There is no likelihood of confusion between Opposer/Plaintiff's mark and its associated goods and services and Applicant/Defendant's mark and the goods set forth in application Serial No. 78/734,101.

Third Affirmative Defense

13. GLOW POP is not recognized by the consuming public as indicating a source or origin of Opposer/Plaintiff's goods.

Fourth Affirmative Defense

14. GLOW POP does not function as a trademark of the Opposer/Plaintiff.

Fifth Affirmative Defense

15. GLOW POP is not inherently distinctive to Opposer/Plaintiff.

Sixth Affirmative Defense

16. GLOW POP has not acquired secondary meaning.

Seventh Affirmative Defense

17. GLOW POP is merely descriptive of the goods sold by Opposer/Plaintiff.

18. The packaging material used with GLOW POP states "Glow Pops come with a glowing handle that illuminates the pop…"

Eighth Affirmative Defense

19. GLOW POP is generic as applied to pops that glow.

Ninth Affirmative Defense

20. Opposer/Plaintiff cannot establish and has not established trademark rights in GLOW POP as associated with candy, namely, pops that glow.

Tenth Affirmative Defense

21. Applicant/Defendant has the privilege and right to engage in commerce using its GLO POPCIFIER mark notwithstanding Opposer/Plaintiff's alleged trademark rights.

Eleventh Affirmative Defense

22. Applicant/Defendant's use of GLO POPCIFIER as applied to its candy product is not likely to cause confusion, mistake or deception with any alleged rights asserted by Opposer/Plaintiff.

Twelfth Affirmative Defense

23. There is no likelihood of confusion between Applicant/Defendant's use of GLO POPCIFIER as applied to its candy product and use of GLO POPCIFIER is not likely to cause confusion, mistake or deception with any alleged rights asserted by Opposer/Plaintiff based on alleged trademark rights in GLOW POP. As such, Defendant has not, is not and will not engage in unfair competition, false designation of origin and/or dilution of any rights possessed by Opposer/Plaintiff.

Thirteenth Affirmative Defense

24. Applicant/Defendant has not, is not and will not cause injury or otherwise damaged Opposer's/Plaintiff's reputation or goodwill.

Fourteenth Affirmative Defense

25. Opposer's/Plaintiff's opposition is barred by the doctrine of trademark misuse.

Fifteenth Affirmative Defense

26. Opposer's/Plaintiff's opposition is barred by its misrepresentations and false statements about its own alleged rights and products.

Sixteenth Affirmative Defense

27. Opposer's/Plaintiff's opposition is barred by its misuse of its alleged trademark rights in a descriptive and generic context and its own representations to the U.S. Patent & Trademark Office concerning the same.

Seventeenth Affirmative Defense

28. Opposer/Plaintiff is misusing any trademark rights that it may possess because it disclaims exclusive rights to the words "POPS" and "GLOW POP" as applied to candy.

Eighteenth Affirmative Defense

29. Opposer/ Plaintiff has unclean hands by filing this Opposition in which it alleges trademark rights that Opposer/Plaintiff knows it does not own.

Nineteenth Affirmative Defense

30. Opposer's/Plaintiff's opposition is barred by its unclean hands.

Twentieth Affirmative Defense

31. Opposer's/Plaintiff's opposition is barred by the doctrine of laches.

Applicant/Defendant reserves the right to assert any additional or further affirmative defenses which may arise in the course of this proceeding.

Wherefore, Applicant/Defendant prays that this Board strike the Notice of Opposition and pass the application to registration.

Respectfully submitted,

/George A. Metzenthin/

George A. Metzenthin
Maurice U. Cahn
CAHN & SAMUELS, LLP
2000 P Street, N.W., Suite 200
Washington, D.C. 20036
Tele: (202) 331-8777
Fax: (202) 331-3838
e-mail: George.Metzenthin@cahnandsamuels.com
Attorneys for Applicant/Defendant

Date: August 30, 2006

Certificate of Service

I HEREBY CERTIFY that a true copy of the following document:

APPLICANT/DEFENDANT'S ANSWER was served on Opposer's attorney by mailing a copy to him this 30th day of August 2006 by First Class, United States Mail, Postage Prepaid, at her last known address as follows:

Stanley I. Goldman
Denning & Wohlstetter
815 Connecticut Avenue, N.W., Suite 500
Washington, D.C. 20006

/George A. Metzenthin/
George A. Metzenthin