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

Proceeding	91176065
Party	Defendant H. Co. Computer Products H. Co. Computer Products 16812 Hale Avenue Irvine, CA 926063222
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Date	04/13/2007
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

LENOVO (SINGAPORE) PTE. LTD.

Opposer,

v.

H. CO. COMPUTER PRODUCTS

Applicant.

Opposition No. 91176065

Mark: THINKCP

Serial No.: 78/636,480

Filed: May 24, 2005

**MOTION TO DISMISS OPPOSITION FOR FAILURE TO STATE A CLAIM**

**Introduction**

Opposer Lenovo (Singapore) Pte. Ltd. ("Lenovo") has filed a defective notice of opposition that must be dismissed for failure to state a claim upon which relief can be granted. Lenovo's notice of opposition fails to establish that Lenovo has standing to bring this action and also fails to state any grounds upon which Applicant H. Co. Computer Products' ("HCCP") should be denied registration. Therefore, HCCP hereby requests that Lenovo's notice of opposition be immediately dismissed.

**Lenovo's Opposition**

Lenovo's notice of opposition asserts that Lenovo owns the registered marks THINK PAD, THINKPAD, THINKLIGHT, THINKSCRIBE, THINKCENTRE, THINKVANTAGE, and THINKVISION and cites the corresponding Registration Numbers. The opposition then merely claims that Lenovo's registrations are valid and that Lenovo owns various pending applications. Nowhere in the notice of opposition does Lenovo make any allegations regarding a likelihood of confusion or any other basis for cancellation, nor does Lenovo allege any kind of actual harm that will arise from the registration of HCCP's trademark. In fact, the opposition

does not even go so far as to assert that the goods are related. These vague and incomplete allegations do not state a cause of action for an opposition proceeding.

### **Requirements for a Valid Notice of Opposition**

A valid notice of opposition must meet the requirements of 37 CFR § 2.104(a). This section provides that "[t]he opposition must set forth a short and plain statement showing why the opposer believes he, she or it would be damaged by the registration of the opposed mark and state the grounds for opposition."

This section has been uniformly interpreted to mandate two requirements for a valid opposition. The opposition must allege: 1) the plaintiff has standing to maintain the proceeding, and 2) a valid statutory ground exists for denying registration of the application. TBMP § 503.02; *Young v. AGB Corp.*, 152 F.3d 1377, 1380 (Fed. Cir. 1998) ("[A] party opposing a registration pursuant to Section 13 of the Lanham Act must show (1) that he has standing and (2) a statutory ground which negates the applicant's entitlement to registration."); *Duramax Marine, LLC v. R.W. Fernstrum & Co.*, 2001 TTAB LEXIS 328 (TTAB Apr. 26, 2001) (same). These two requirements are "distinct inquiries" and must both be satisfied before an opposition can proceed. *Young*, 152 F.3d at 1380.

As explained below, Lenovo's opposition must be dismissed because it fails to meet either requirement. The notice of opposition fails to establish standing because it does not allege that Lenovo *will* be damaged by HCCP's registration. It also fails to establish a statutory ground for denial of registration. Indeed, the notice of opposition does not allege a likelihood of confusion, nor does it assert that HCCP's mark is identical or similar to those listed by Lenovo, nor does it assert that the goods used by the two parties with their respective marks are similar or related.

### **Lenovo's Opposition Fails to Establish that Lenovo Has Standing**

To demonstrate a real interest in the proceeding and thereby establish standing, Lenovo must assert that it will be damaged by HCCP's registration. 37 CFR § 2.104(a) (requiring the opposition to "set forth a short and plain statement showing why the opposer believes he, she or it would be damaged by the registration of the opposed mark"); *Young*, 152 F.3d at 1380 (analogizing cancellation and opposition proceedings and explaining that "[t]he standing requirement is based on the statutory requirement that a cancellation petitioner must believe that 'he is or will be damaged by the registration'").

The requirement in § 2.104 is clear -- the opposer must allege damage; an allegation of possible or potential damage is insufficient. Without any allegation of damage, the opposer has no real interest in the proceeding. The damage requirement is simple, straightforward, and mandatory. Lenovo's notice of opposition fails to meet this requirement because the opposition fails to allege that Lenovo will be damaged by HCCP's registration.

In fact, Lenovo has made no allegation in the opposition that can even support a claim of damage. Lenovo simply provides a description of the goods identified in HCCP's application and provides a list of its own registrations. Lenovo does not make any direct comparison between its goods and HCCP's goods. Instead, in the introductory paragraph of its notice of opposition, Lenovo merely states that it "*believes it may be damaged by the registration*" (emphasis added). Without comparing the two companies' goods, Lenovo has no basis for alleging that it will be damaged by HCCP's use of its mark on HCCP's goods. By failing to allege damage, Lenovo has no standing to maintain this proceeding, and the opposition must therefore be dismissed.

### **Lenovo's Opposition Fails to State a Statutory Ground for Denial of HCCP's Application**

Lenovo's opposition also fails because it does not state a statutory ground supporting the denial of registration of HCCP's application. The opposer must allege facts that support a

statutory ground for denial of registration. TBMP § 503.02; *Young*, 152 F.3d at 1380. In *Young*, the opposer's notice of opposition described the opposer's business, explained the commercial interactions between the parties, and alleged that the opposer would be damaged by the registration. The Federal Circuit, however, held that the opposition did not state a claim. *Young*, 152 F.3d at 1380. The opposer had not stated specific facts showing a statutory ground for denial of registration, so his opposition was dismissed. *Id.*

Similarly, in *Duramax Marine*, the TTAB dismissed an opposition for failure to state a claim where the opposition failed to include specific allegations showing that the applicant's mark was merely descriptive and therefore not entitled to registration. 2001 TTAB LEXIS 328, at \*9 ("[T]here are no specific allegations in [the opposition] that, if proved, would establish that applicant's merely descriptive mark has not become distinctive of applicant's services or that the primary significance of the proposed mark remains the original descriptive significance"). The Board emphasized that making vague allegations and simply referencing the statute would not satisfy the requirements for a valid opposition. *Id.* (holding that "[m]erely referencing the statutory provisions" is not enough to establish a statutory ground). Thus, to maintain this opposition, Lenovo must state specific facts which support a specifically alleged statutory ground for refusal, such a likelihood of confusion.

Not only does Lenovo's notice of opposition lack any recitation of facts supporting a cause of action, but Lenovo also does not even mention any statutory ground on which it can claim a basis for relief. In *Duramax Marine*, the opposer had at least made reference to statutory provisions under which registration might be denied. Lenovo, however, does not even mention any statutory provision. Instead, Lenovo simply provides background information about HCCP's application and lists the goods identified in the application. It then provides basic information about its registrations. Nowhere in its petition does Lenovo ever allege, or even mention, likelihood of confusion or any other statutory grounds for relief. Thus, just as the opposer in

*Duramax Marine* did not allege any statutory ground for relief, so too has *Lenovo* failed to allege some basis for relief, thus rendering its notice of opposition insufficient to state a claim.

Moreover, not only does *Lenovo* fail to allege a likelihood of confusion, it does not allege that the parties' marks are similar, does not allege the corresponding goods/services are identical or related, does not allege the channels of trade are related, does not allege the connotation of the relevant marks are similar, and does not allege the pronunciation of the relevant marks are the same. *Lenovo* has failed to allege a required statutory ground for relief.

### **Conclusion**

*Lenovo's* notice of opposition fails to satisfy the requirements of 37 CFR § 2.104(a) and should therefore be dismissed for failure to state a claim. The opposition does not allege that *Lenovo* will be damaged by registration of HCCP's mark or that the marks and their respective goods will likely cause confusion. *Lenovo* thus fails to establish standing and also fails to state a statutory ground upon which relief may be granted. HCCP therefore respectfully requests that the opposition be dismissed.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date April 13, 2007

By Gary J. Nelson

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**CERTIFICATE OF TRANSMISSION AND SERVICE**

I certify that on April 13, 2007, the foregoing **MOTION TO DISMISS OPPOSITION FOR FAILURE TO STATE A CLAIM** is being electronically filed with:

Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

It is further certified that on April 13, 2007, the foregoing **MOTION TO DISMISS OPPOSITION FOR FAILURE TO STATE A CLAIM** is being served by mailing a copy thereof by first-class mail addressed to:

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