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

Proceeding	91179897
Party	Defendant Bristol Technologies, Inc.
Correspondence Address	ROER L. BELFAY 829 TUSCARORA AVE SAINT PAUL, MN 55102-3931 UNITED STATES rogerbelfay@rogerbelfay.com
Submission	Other Motions/Papers
Filer's Name	Roger Belfay
Filer's e-mail	rogerbelfay@rogerbelfay.com
Signature	/yaflebregor/
Date	05/08/2008
Attachments	reply-motiontoamend-motionforsj080508.pdf (36 pages)(692488 bytes)

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

----------X
Information Builders, Inc.
Opposer,

Opposition No. 91/179897

V.

Serial No. 78954755

Bristol Technologies, Inc.,
Applicant
----------X

MOTION TO AMEND APPLICATION, RESPONSE TO OPPOSER'S MOTION FOR SUMMARY JUDGEMENT AND MOTION FOR JUDGMENT ON THE PLEADINGS

Applicant hereby (1) moves to amend its trademark Application Serial No. 78954755 in the interest of justice, (2) replies to Opposer's Motion for Summary Judgment, and (3) moves for Judgment on the Pleadings. Opposer's claim of fraud is moot with approval of motion to amend and Opposer's claim that Applicant's mark was confusingly similar to Opposer's Registered marks was already decided by examiner when Examiner found no marks that were confusingly similar.

The Amended Application SN78954755

According to TBMP 514.03, "The Board, in its discretion, may grant a motion to amend an application … which is the subject of an inter partes proceeding, even if the other party or parties do not consent thereto." "When a motion to amend an application or registration in substance is made without the consent of the other party or parties, it ordinarily should be made prior to trial, in order to give the other party or parties fair notice thereof". "The Board generally will defer determination of a timely filed (i.e., pre-trial) unconsented motion to

amend in substance until final decision, or until the case is decided upon summary judgment."

Applicant is making a motion to amend his application prior to trial so Opposer is not prejudiced. Applicant motions to amend his application, Serial No. 78954755, from 1(a) to 1(b). As a result of Applicant recently becoming aware that the date of commercial use of the substituted specimen was not as early as the filing date of the application, applicant desires, for the purpose of justice, to amend his application from 1(a) to 1(b). This will enable Applicant to file a Statement of Actual Use stating the correct date of commercial use once the opposition period is successfully concluded and a Notice of Allowability is issued.

Reply to Opposer's Motion for Summary Judgment

Opposer contends that Applicant's Application should be terminated because of fraud as to use in commerce.

If Applicant's motion to amend Application from 1(a) to 1(b) status is granted, Opposer's claim in amended Notice of Opposition is moot and Opposer's Motion for Summary Judgment should be denied.

Applicant's Motion for Judgment on the Pleadings

Applicant motions for a judgment on the pleadings because there are no factual issues outstanding.

According to TBMP 504.01, "After the pleadings are closed, but within such time as not to delay the trial, any party to an inter partes proceeding before the Board may file a motion for judgment on the pleadings. In Board inter partes proceedings, the taking of testimony depositions during the assigned testimony periods corresponds to the

trial in court proceedings, and the trial period commences with the opening of the first testimony period. Thus, to be timely, a motion for judgment on the pleadings must be filed after the pleadings are closed, but prior to the opening of the first testimony period, as originally set or as reset."

This motion for Judgment on the Pleadings is timely as pleadings are closed and the trial has not started.

According to TBMP 504.02, "A motion for judgment on the pleadings is a test solely of the undisputed facts appearing in all the pleadings, supplemented by any facts of which the Board will take judicial notice. For purposes of the motion, all well pleaded factual allegations of the nonmoving party must be accepted as true, while those allegations of the moving party which have been denied (or which are taken as denied, pursuant to Fed. R. Civ. P. 8(d), because no responsive pleading thereto is required or permitted) are deemed false. Conclusions of law are not taken as admitted. All reasonable inferences from the pleadings are drawn in favor of the nonmoving party. A judgment on the pleadings may be granted only where, on the facts as deemed admitted, there is no genuine issue of material fact to be resolved, and the moving party is entitled to judgment, on the substantive merits of the controversy, as a matter of law. A party may not obtain a judgment on the pleadings if the nonmoving party's pleading raises issues of fact, which, if proved, would establish the nonmoving party's entitlement to judgment."

In the pleadings, Opposer claims that Applicant's mark will dilute Opposer's marks. However, The Examiner of Applicants Application in an office action dated 1/12/2007 and shown as Exhibit A stated that the records (of the

USPTO) were searched and no similar record was found that would bar registration.

Opposer had not shown any evidence of damages that would be sustained from a mark of Applicant's that, according to the examiner was "not similar".

Applicant has served Interrogatories on 11-17-2007 to Opposer to determine validity of Opposer's dilution claim (See Exhibit B) and received Response on 1-11-2008 (See Exhibit C).

Opposer had not shown any evidence of damages that would be sustained from a mark of Applicant's that, according to the examiner was "not similar" or that Opposer's marks have reached a presence in the marketplace from which dilution could be claimed.

Opposer chose to selectively answer the Interrogatories. As seen in Exhibit C, Opposer answered most of the interrogatories about what business was trademarked, when trademarks were used and whether they were abandoned (See Responses to Interrogatories No. 1, 2, 3, 5, 6, 10, 12, 13, 15, 20, 21, and 24.

However, Opposer refused to answer interrogatories aimed at showing the extent of awareness that marketplace had of Opposer's trademarks (see Responses to Interrogatories No. 7, 9, 17, 18, and 19. These questions were intended by Applicant to gain factual information that would support whether dilution could reasonably occur. Opposer's reason was consistently that the information sought was "confidential business information" or "none". Of Particular note was Opposer's answer to Interrogatory No 16 "Fully describe each shopping survey or public opinion poll involving one or more of the Marks conducted by or on behalf of Opposer (including date conducted, location,

persons involved, and questions asked)" Opposer's response was "None".

Thus there is no factual information to support Opposer's claim of dilution by Applicant's trademark because there is no factual information showing how broadly known Opposer's trademarks are in the industries serviced by Opposer. To call Opposer's trademarks famous a.k.a. Northwest Airlines® or NWA® is not evidenced by Opposer's responses.

Opposer also claims in the amended pleadings that Applicant's Application should be denied on the basis of fraud on the USPTO.

When the Motion to Amend Application is approved, this claim is moot.

Wherefore, Applicant prays that the registration for which application has been made be allowed and that this opposition be denied.

Bristol Technologies, Inc.

Roger L. Belfay, Esq.

Roger L. Belfay
Attorney for Applicant
829 Tuscarora Avenue
Saint Paul, Minnesota 55102
651-222-2782

May 8, 2008
Saint Paul, Minnesota

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the forgoing MOTION TO AMEND APPLICATION, RESPONSE TO OPPOSER"S MOTION FOR SUMMARY JUDGEMENT AND MOTION FOR JUDGEMENT ON THE PLEADINGS has been sent this 8th day of May, 2008, by first class mail, postage prepaid to:

Alan H. Levine
Howard F. Mandelbaum
Attorneys for Petitioner
Levine & Mandelbaum
444 Madison Avenue, 35th Floor
New York, New York 10022
(212) 588-9800

Roger L. Belfay, Esq.

Roger L. Belfay

EXHIBIT A

To:	Bristol Technologies, Inc. (rogerbelfay@rogerbelfay.com)
Subject:	TRADEMARK APPLICATION NO. 78954755 - BRISTOL FOCUS - 20060805-002
Sent:	1/12/07 2:44:09 PM
Sent As:	ECOM110@USPTO.GOV
Attachments:	

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/954755

APPLICANT: Bristol Technologies, Inc.

78954755

CORRESPONDENT ADDRESS:
ROER L. BELFAY
829 TUSCARORA AVE
SAINT PAUL, MN 55102-3931

RETURN ADDRESS:
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: BRISTOL FOCUS

CORRESPONDENT'S REFERENCE/DOCKET NO: 20060805-002

CORRESPONDENT EMAIL ADDRESS:
rogerbelfay@rogerbelfay.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at http://tarr.uspto.gov/, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/954755

The assigned trademark examining attorney has reviewed the referenced application and has determined the following:

Search Results

The Office records have been searched and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

In order for the mark to be registrable, the applicant must respond to the following:

Specimen

The specimen is not acceptable because it consists of advertising material for goods. Section 45 of the Trademark Act requires use "on the goods or their containers or the displays associated therewith or on tags or labels affixed thereto." 15 U.S.C. §1127; *see* 37 C.F.R. §2.56(b)(1); TMEP §904.05.

Material that functions merely to tell prospective purchasers about the goods, or to promote the sale of the goods, is unacceptable to show trademark use. Indeed, invoices, business cards, announcements, price lists, listings in trade directories, order forms, bills of lading, leaflets, brochures, publicity releases, advertising circulars and other printed advertising material, while normally acceptable for showing use in connection with services, generally are not acceptable specimens for showing trademark use in connection with goods. *See In re MediaShare Corp.*, 43 USPQ2d 1304, 1307 (TTAB 1997); *In re Schiapparelli Searle*, 26 USPQ2d 1520, 1522 (TTAB 1993); TMEP §§904.05 and 904.07.

An application based on Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods. Trademark Act Sections 1, 2 and 45, 15 U.S.C. §§1051-1052 and 1127; 37 C.F.R. §2.34(a)(1)(iv).

Therefore, applicant must submit the following:

(1) A substitute specimen showing the mark in use in commerce for the goods specified in the application; and

(2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: "**The substitute specimen was in use in commerce at least as early as the filing date of the application.**" 37 C.F.R. §2.59(a); TMEP §904.09. If submitting a specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c).

Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the goods or packaging, or displays associated with the goods at their point of sale. TMEP §§904.04 *et seq.*

If applicant cannot satisfy the above requirements, applicant may amend the Section 1(a) filing basis (use in commerce) to Section 1(b) (intent to use basis), for which no specimen is required. However, should applicant amend the basis to Section 1(b), registration cannot be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. 15 U.S.C. §1051(c); 37 C.F.R. §§2.76, 2.88; TMEP Chapter 1100.

In order to amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: "**Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the filing date of the application.**" 15 U.S.C. §1051(b); 37 C.F.R. §§2.34(a)(2) and 2.35(b)(1); TMEP §806.01(b).

The following is a sample declaration under 37 C.F.R. §2.20 with a supporting statement for a substitute specimen. It must be signed by someone authorized to sign under 37 C.F.R. §2.33(a)[1][1]:

> 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 there from, declares *that the substitute specimen was in use in commerce at least as early as the filing date of the application;* all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

_____

(Signature)

_____

(Print or Type Name and Position)

_____

(Date)

Pending a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a trademark. 15 U.S.C. §§1051-1052 and 1127; 37 C.F.R. §§2.34(a)(1)(iv) and 2.56.

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: TEAS Plus applicants should submit the following documents using the Trademark Electronic Application System (TEAS) at http://www.uspto.gov/teas/index.html: (1) written responses to Office actions; (2) preliminary amendments; (3) changes of correspondence address; (4) changes of owner's address; (5) appointments and revocations of attorney; (6) amendments to allege use; (7) statements of use; (8) requests for extension of time to file a statement of use, and (9) requests to delete a

§1(b) basis. If any of these documents are filed on paper, they must be accompanied by a $50 per class fee. 37 C.F.R. §§2.6(a)(1)(iv) and 2.23(a)(i). Telephone responses will not incur an additional fee. NOTE: In addition to the above, applicant must also continue to accept correspondence from the Office via e-mail throughout the examination process in order to avoid the additional fee. 37 C.F.R. §2.23(a)(2).

If applicant has questions about its application or needs assistance in responding to this Office Action, please telephone the assigned trademark examining attorney directly at the number below.

/Scott M. Sisun/

Examining Attorney

Law Office 110

571-272-5493

HOW TO RESPOND TO THIS OFFICE ACTION:

- ONLINE RESPONSE: You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at http://www.uspto.gov/teas/index.html. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**
- REGULAR MAIL RESPONSE: To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the *date of receipt in the Office*,** not the postmarked date. To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at http://tarr.uspto.gov.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at http://portal.uspto.gov/external/portal/tow.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at http://www.uspto.gov/main/trademarks.htm

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

EXHIBIT B

----------X
Information Builders, Inc.
Opposer,

Opposition No. 91179897

V.

Serial No. 78954755

Bristol Technologies, Inc.,
Applicant
----------X

APPLICANT'S FIRST INTERROGATORIES TO OPPOSER

Applicant, Bristol Technologies, Inc., Pursuant to Rule 2.120 of the Trademark Rules of Practice of the Patent and Trademark office and rule 33 of the Federal Rules of Civil Procedure, hereby submits its first set of interrogatories to Opposer, Information Builders, Inc., to be answered under oath by Opposer.

These interrogatories shall be deemed to be continuing and it is requested that Opposer serve upon Applicant supplementary answers as required by Rule 26(e) of the Federal Rules of civil procedure.

For the convenience of the board and Counsel, it is requested that each interrogatory be set forth immediately preceding the answer thereto.

Interrogatory No. 1

Fully set forth the principal business conducted by the Opposer and its licensee(s) in which the marks "FOCUS", "PC/FOCUS", "FOCUS VISION", "FOCUS FORECASTING", and "WEBFOCUS" (Hereinafter "the Marks") are presently used or if not yet in use, are intended to be used.

Interrogatory No. 2

(a) Describe in detail each and every product and service ever intended to be marketed, or already marketed, by Opposer, or its licensee(s), at any time under one or more of the Marks.

(b) Set forth the date of first use of each of the Marks on or in connection with each such product or service identified in response to Interrogatory No. 2(a). For each mark for which there is no first use on or in conjunction with a product identified in response to interrogatory No. 2(a) indicate so with the phrase "no first use".

(c) Set forth the date of most recent use of the Marks on or in connection with each such product identified in response to Interrogatory No. 2(a).

Interrogatory No. 3

State when Opposer first intended to use each of the Marks and when it made the decision to adopt and use each of the Marks.

Interrogatory No. 4

Identify all documents and things considered in connection with the conception, intention to use, and use of each of the Marks.

Interrogatory No. 5

Fully identify any license which has been granted to or by Opposer for use of each and every one of the Marks (include parties to the license, date, substance of the license, and goods for which such license was granted.

Interrogatory No. 6

Describe each and every measure taken by the licensor(s) to ensure control over the quality of each and every product and service for which each of the Marks has/have been licensed.

Interrogatory No. 7

For each of the Marks, set forth for each product and service identified in response to Interrogatory No. 2(a) for each year since the first use of said mark or marks:

(a) The quantity of such product sold or licensed by Opposer under each the marks.

(b) Opposer's dollar amount of annual sales for each such product sold under each of the Marks.

(c) Opposer's dollar amount of annual sales for each such service sold under each of the Marks.

Interrogatory No. 8

For each product identified in response to Interrogatory No. 2(a), state the average price at wholesale and retail for each item sold under each Mark.

Interrogatory No. 9

For each product and service identified in response to Interrogatory No. 2(a), set forth for each year since the date of first use of each of the marks on or in connection with each such product or service, the dollar amount expended by Opposer on advertising and promotion under each of the Marks.

Interrogatory No. 10

State whether use of any of the Marks by the Opposer has ever been interrupted, and if so, state the date and duration of each such interruption.

Interrogatory No. 11

Specify the date and place of Opposer's first advertising of each of the Marks, state the specific nature of such advertising, including the type or types of products and services on or in connection with such first advertising was made, and identify all documents concerning such advertising.

Interrogatory No. 12

For each of the Marks, identify each and every publication in which Opposer intends to advertise or has

advertised any of its products licensed or sold, or services promoted or rendered under such mark.

Interrogatory No. 13

Fully identify each different document and thing not otherwise identified in response to these interrogatories on which Opposer has used any of the Marks or intends to use any of the Marks.

Interrogatory No. 14

Identify all distributors, representatives, and salespeople who have participated in the marketing of Opposer's products or services under one or more of the Marks or whom Opposer intends to have participate in the marketing of Opposer's products or services under one or more the Marks.

Interrogatory No. 15

(a) Describe the class of consumers to whom Opposer has marketed, or intends to market, each of the goods and services identified in response to Interrogatory No. 2(a).

(b) Describe in detail the manner in which the Opposer's products are identified by one or more of the Marks are distributed, or are intended to be distributed to the ultimate consumer of the products, e.g. through distributors.

Interrogatory No. 16

Fully describe each shopping survey or public opinion poll involving one or more of the Marks conducted by or on behalf of, Opposer (include date conducted, Location, persons involved, and questions asked.

Interrogatory No. 17

Fully describe, including subject and date, any report which has been prepared concerning any matter relating to this proceeding.

Interrogatory No. 18

Fully describe each inquiry Opposer has received concerning Applicant or Applicant's products, services, trademarks, and service marks, (include date, persons involved, substance and documents).

Interrogatory No. 19

State whether Opposer has ever received from any person or entity any misdirected mail, telephone calls, orders, complaints, or other matter apparently intended for Applicant. If so identify all such persons or entities and all documents and oral communications concerning the misdirected mail, telephone calls, orders, complaints or other matter.

Interrogatory No. 20

Identify the individual or individuals who conceived of each of the Marks, and the date of such conception.

Interrogatory No. 21

Fully describe each search or investigation ever conducted by Opposer to determine the availability of each of the Marks (include scope of search, identity of invstigator, results, and documents and oral communications concerning each such search or investigation involved), excluding comments and opinions of attorneys.

Interrogatory No. 22

Fully describe the details of Opposer's first learning of Applicant's intended use of the Mark "Bristol Focus" (include time, place, goods on which used, if applicable, and circumstances, and documents involved).

Interrogatory No. 23

Fully describe each legal proceeding (other than the present one), whether in the United States Patent and Trademark Office, or any court, which involved or pertained

to Opposer's use of any of the Marks or "Bristol Focus" (include title of proceeding, forum, nature of proceeding, and final outcome).

Interrogatory No. 24

Explain the origin of each of the Marks which are cited in this opposition to the Applicant's application for registration.

Interrogatory No. 25

Identify each version of Applicant's software ever purchase, licensed, or used by Opposer, state the date and version of the software, and all purposes for which it has ever been used.

Interrogatory No. 26

Identify all documents referred to in preparing responses to each of the foregoing interrogatories.

Bristol Technologies, Inc.

Roger L. Belfay
Attorney for Applicant
829 Tuscarora Avenue
Saint Paul, Minnesota 55102
651-222-2782

EXHIBIT C

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

----------X
INFORMATION BUILDERS, INC.

Opposer,

v.

Opposition No. 91179897

Serial No. 78954755

BRISTOL TECHNOLOGIES, INC.,

Applicant.
----------X

OPPOSER'S RESPONSE TO APPLICANT'S FIRST
SET OF INTERROGATORIES TO OPPOSER

Opposer, Information Builders Inc., pursuant to Rule 2.120 of the Trademark Rules of Practice of the Patent and Trademark Office and Rule 33 of the Federal Rules of Civil Procedure, hereby submits its response to Applicant's First Set Of Interrogatories To Opposer.

Interrogatory No. 1

Fully set forth the principal business conducted by the Opposer and its licensee(s) in which the marks "FOCUS", "PC/FOCUS", "FOCUS VISION", "FOCUS FORECASTING", and "WEBFOCUS" (Hereinafter "the Marks") are presently used or if not yet in use, are intended to be used.

Response

Opposer is in the business of authoring and licensing computer software.

Interrogatory No. 2

(a) Describe in detail each and every product and service ever intended to be marketed, or already marketed, by Opposer, or its licensee(s), at any time under one or more of the Marks.

(b) Set forth the date of first use of each of the Marks on or in connection with each such product or service identified in response to Interrogatory No. 2(a). For each mark for which there is no first use on or in conjunction with a product identified in response to interrogatory No. 2(a) indicate so with the phrase "no first use".

(c) Set forth the date of most recent use of the Marks on or in connection with each such product identified in response to Interrogatory No. 2(a).

Response

FOCUS - computer programs for data base management - first use at least as early as 1975; computer software for database management; computer software for use in decision support systems; computer software for use in enterprise reporting and analysis systems and for building applications for the management and tracking of data for enterprise reporting systems; computer database programs for use in connection with decision support, analysis, and reporting programs; computer software development tools for use in developing decision support, analysis, and reporting systems

and applications; computer software, namely, client/server reporting, analysis and decision support tools; computerized database, reporting, and analysis software for use on corporate intranet web sites; enterprise server software for use in web based data publishing, reporting, and analysis solutions; computer software for accessing databases by means of global computer networks to generate reports; software development tools for making reporting and analysis available through global computer network worldwide websites and for extending the functionality of enterprise reporting and analysis systems on to global computer networks; and computer software for accessing and updating databases through global computer networks. first use at least as early as 1975; computer services, namely, providing online information to facilitate demonstration, test use, and ordering of computer software - first use at least as early as 1996.

PC/FOCUS - A microprocessor program for use in preparation of reports and graphs from data stored in a personal computer - first use at least as early as 1982;

FOCUS VISION - Pre-recorded computer programs used to store images in a database - first use at least as early as 1986;

FOCUS FORECASTING - consulting services in the field of inventory management and control for businesses including

the use of computers and computer techniques in the field of inventory management and control for businesses - first use at least as early as 1974; computer programs recorded on electronic media, namely tapes or discs, for use by businesses to plan inventory needs and to manage and control inventory - first use at least as early as 1978.

WEBFOCUS - computer software for database management; first use at least as early as 1996; software for accessing databases by means of global computer networks to generate reports; software development tools for making reporting and analysis available through global computer network worldwide websites and for extending the functionality of enterprise reporting and analysis systems on to global computer networks; and computer software for accessing and updating databases through global computer networks - first use at least as early as 1996.

Interrogatory No. 3

State when Opposer first intended to use each of the Marks and when it made the decision to adopt and use each of the Marks.

Response

Opposer first selected FOCUS as a trademark in or before 1975 and began to use it immediately thereafter.

Interrogatory No. 4

Identify all documents and things considered in connection with the conception, intention to use, and use of each of the Marks.

Response

Opposer objects to this interrogatory as calling for identification of irrelevant documents, since Opposer's adoption, development, use and registration of its Marks long antedate the filing of the application opposed herein.

Interrogatory No. 5

Fully identify any license which has been granted to or by Opposer for use of each and every one of the Marks (include parties to the license, date, substance of the license, and goods for which such license was granted).

Response

License from Information Builders, Inc. to Bernard T. Smith and Bernard T. Smith Associates to use the mark FOCUS FORECASTING, dated August 31, 1998.

License from Information Builders, Inc. to Paisley Consulting, Inc. to use the mark FOCUS dated December 2, 2004.

Interrogatory No. 6

Describe each and every measure taken by the licensor(s) to ensure control over the quality of each and

every product and service for which each of the Marks has/have been licensed.

Response

The licensor has fixed standards of quality for the programs and services and has the right to receive samples of and conduct inspections of products and services in connection with which each FOCUS mark is used.

Interrogatory No. 7

For each of the Marks, set forth for each product and service identified in response to Interrogatory No. 2(a) for each year since the first use of said mark or marks:

(a) The quantity of such product sold or licensed by Opposer under each the marks.

(b) Opposer's dollar amount of annual sales for each such product sold under each of the Marks.

(c) Opposer's dollar amount of annual sales for each such service sold under each of the Marks.

Response

Opposer objects to answering this interrogatory on the ground that it seeks confidential business information. After entry of an attorneys-eyes-only protective order, Opposer will produce documents responsive to this interrogatory.

Interrogatory No. 8

For each product identified in response to Interrogatory No. 2(a), state the average price at wholesale and retail for each item sold under each Mark.

Response

Opposer objects to answering this interrogatory on the ground that it seeks confidential business information. Nor does Opposer maintain records of average prices. After entry of an attorneys-eyes-only protective order, Opposer will produce records stored in its offices and/or warehouse which contain pricing information.

Interrogatory No. 9

For each product and service identified in response to Interrogatory No. 2(a), set forth for each year since the date of first use of each of the marks on or in connection with each such product or service, the dollar amount expended by Opposer on advertising and promotion under each of the Marks.

Response

Opposer objects to answering this interrogatory on the ground that it seeks confidential business information. After entry of an attorneys-eyes-only protective order, Opposer will produce advertising expense records stored in its offices and/or warehouse which contain information responsive to this interrogatory.

Interrogatory No. 10

State whether use of any of the Marks by the Opposer has ever been interrupted, and if so, state the date and duration of each such interruption.

Response

Use of the Focus Mark by Opposer has never been interrupted.

Interrogatory No. 11

Specify the date and place of Opposer's first advertising of each of the Marks, state the specific nature of such advertising, including the type or types of products and services on or in connection with such first advertising was made, and identify all documents concerning such advertising.

Response

Opposer objects to this interrogatory as calling for irrelevant information, since Opposer's adoption, development, use and registration of its Marks long antedate the filing of the application opposed herein.

Interrogatory No. 12

For each of the Marks, identify each and every publication in which Opposer intends to advertise or has advertised any of its products licensed or sold, or services promoted or rendered under such mark.

Response

In the past thirty years, Opposer has advertised in numerous trade journals and publications. Opposer will produce records of its advertising in response to this Interrogatory.

Interrogatory No. 13

Fully identify each different document and thing not otherwise identified in response to these interrogatories on which Opposer has used any of the Marks or intends to use any of the Marks.

Response

Software, CDs, DVDs, magnetic tape, instruction manuals, promotional materials, advertising, the Internet, and the like.

Interrogatory No. 14

Identify all distributors, representatives, and salespeople who have participated in the marketing of Opposer's products or services under one or more of the Marks or whom Opposer intends to have participate in the marketing of Opposer's products or services under one or more the Marks.

Response

Opposer objects to this interrogatory as vague, overly broad, and burdensome. Opposer has been marketing its products and services for more than thirty years and is unable to name every one of its distributors, representative and sales people.

Interrogatory No. 15

(a) Describe the class of consumers to whom Opposer has marketed, or intends to market, each of the goods and services identified in response to Interrogatory No. 2(a).

(b) Describe in detail the manner in which the Opposer's products are identified by one or more of the Marks are distributed, or are intended to be distributed to the ultimate consumer of the products, e.g. through distributors.

Response

(a) Opposer seeks to sell its FOCUS products to computer users having a need for storing, retrieving, viewing, analyzing, and reporting data.

(b) Opposer's products are licensed directly to the ultimate consumers.

Interrogatory No. 16

Fully describe each shopping survey or public opinion poll involving one or more of the Marks conducted by or on

behalf of, Opposer (include date conducted, Location, persons involved, and questions asked).

Response

None.

Interrogatory No. 17

Fully describe, including subject and date, any report which has been prepared concerning any matter relating to this proceeding.

Response

None

Interrogatory No. 18

Fully describe each inquiry Opposer has received concerning Applicant or Applicant's products, services, trademarks, and service marks, (include date, persons involved, substance and documents).

Response

None

Interrogatory No. 19

State whether Opposer has ever received from any person or entity any misdirected mail, telephone calls, orders, complaints, or other matter apparently intended for Applicant. If so identify all such persons or entities and all documents and oral communications concerning the misdirected mail, telephone calls, orders, complaints or other matter.

Response

No

Interrogatory No. 20

Identify the individual or individuals who conceived of each of the Marks, and the date of such conception.

Response

Gerald D. Cohen conceived of the Focus Mark in or about 1975.

Interrogatory No. 21

Fully describe each search or investigation ever conducted by Opposer to determine the availability of each of the Marks (include scope of search, identity of investigator, results, and documents and oral communications concerning each such search or investigation involved), excluding comments and opinions of attorneys.

Response

A search of the mark FOCUS was conducted by Opposer's attorney Alan H. Levine, Esq. in January 1975.

Interrogatory No. 22

Fully describe the details of Opposer's first learning of Applicant's intended use of the Mark "Bristol Focus" (include time, place, goods on which used, if applicable, and circumstances, and documents involved).

Response

The mark was discovered by Opposer's attorney in the September 25, 2007 edition of the Official Gazette of the Patent and Trademark Office.

Interrogatory No. 23

Fully describe each legal proceeding (other than the resent one), whether in the United States Patent and trademark Office, or any court, which involved or pertained o Opposer's use of any of the Marks or "Bristol Focus" include title of proceeding, forum, nature of proceeding, and final outcome).

Response

In addition to litigation in federal court, Opposer has brought in excess of 200 oppositions in the U.S. Patent and Trademark Office. Opposer will produce business records containing information responsive to this interrogatory for inspection in accordance with Fed. R. Civ. P. 33(d) at the offices of its attorneys.

Interrogatory No. 24

Explain the origin of each of the Marks which are cited in this opposition to the Applicant's application for registration.

Response

Opposer's founder coined the term FOCUS as an acronym for "For Online Computer Users".

Interrogatory No. 25

Identify each version of Applicant's software ever purchased, licensed, or used by Opposer, state the date and version of the software, and all purposes for which it has ever been used.

Response

None.

Interrogatory No. 26

Identify all documents referred to in preparing responses to each of the foregoing interrogatories.

Response

Discovery responses in other opposition proceedings were consulted. Opposer will produce the documents at the offices of its attorneys where they are kept in the normal course of business.

Objections by: Levine & Mandelbaum

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Information Builders, Inc.

_____

Gerald D. Cohen, President

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

On this ____ day of January 2008, before me personally came Gerald D. Cohen, to me personally known, who being by me duly sworn did depose and say that he is President of Information Builders, Inc. referred to in the foregoing document, that he has read said document and knows the contents thereof, and that the same are true to his own knowledge or to the best of his information and belief as an officer of said company.

_____

Notary Public