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

Proceeding	91179897
Party	Plaintiff Information Builders, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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INFORMATION BUILDERS, INC. :
 Opposer, :
 v. : Opposition No. 91179897
BRISTOL TECHNOLOGIES, INC. :
 Applicant. :
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OPPOSER'S RESPONSE TO (1) APPLICANT'S MOTION TO AMEND
APPLICATION AND (2) APPLICANT'S MOTION FOR JUDGMENT ON THE
PLEADINGS, AND (3) OPPOSER'S REPLY TO APPLICANT'S RESPONSE TO
OPPOSER'S MOTION FOR SUMMARY JUDGMENT

(1) and (3) Applicant's Motion To Amend Its Application Should
Be Denied and Opposer's Motion for Summary Judgment Granted

Applicant seeks to amend its application from a Section 1(a) use application to a Section 1(b) intention to use application. In this way, Applicant seeks to avoid having to deal with the issue raised in Opposer's Motion for Summary Judgment, namely, the fraud Applicant perpetrated on the Patent and Trademark Office.

As fully described in Opposer's Summary Judgment motion, Applicant not only filed its application under Section 1(a) without having used the opposed mark in commerce, it then responded to the Trademark Examiner's action, objecting to the

specimen, with a fabricated substitute specimen allegedly showing use of the mark on a computer system. In fact, Applicant had not sold even one computer system prior to filing that specimen.

Having had its "hand caught in the cookie jar" by Opposer's Motion for Summary Judgment, Applicant is now attempting to finesse its fraud by belatedly changing the application from a 1(a) basis to a 1(b) basis. Fraud cannot be overcome so easily.

In fact, Applicant's Motion to Amend can be interpreted as an admission of its fraud. In any case, Applicant's Motion to Amend should be denied, and Opposer's Motion for Summary Judgment granted.

(2) Applicant's Motion for Judgment on the Pleadings

Should be Denied

Applicant's Motion for Judgment is based on the fact that the Examining Attorney who handled the opposed application did not refuse registration on the basis of Opposer's registered marks, or any other registered marks. This is not grounds for Judgment on the Pleadings, since the Examining Attorney's decision not to cite Opposer's marks against Applicant is not dispositive of the issue of likelihood of confusion in an opposition proceeding. (It is noted that Applicant's motion refers only to the dilution issued raised in the Notice of

Opposition, and does not refer to likelihood of confusion, an issue also raised in the Notice of Opposition.)

Therefore, Applicant's Motion for Judgment on the Pleadings should be denied.