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

Proceeding	91180462
Party	Defendant Charles Kenworthy and Terri Kenworthy
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Submission	Opposition/Response to Motion
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Signature	/Daniel M. Cislo/
Date	03/12/2008
Attachments	Applicant's Opposition to Opposer's Motion for (Partial) Dismissal of Counterclaim.PDF ( 8 pages )(514666 bytes ) First Amended Answer to Notice of Opposition and 1st Amended Counterclaim for Cancellation.PDF ( 17 pages )(785141 bytes )

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

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**IN THE MATTER OF APPLICATION SERIAL NOS. 76/670,880, 76/670,902  
PUBLISHED IN THE OFFICIAL GAZETTE ON JULY 3, 2007**

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CALIFORNIA CLOSET COMPANY, INC.	)	<b>OPPOSITION NO. 91180462</b>
	)	
OPPOSER,	)	
vs.	)	<b>APPLICANT'S OPPOSITION TO</b>
	)	<b>OPPOSER'S MOTION FOR (PARTIAL)</b>
CHARLES KENWORTHY and TERRI	)	<b>DISMISSAL OF COUNTERCLAIM;</b>
KENWORTHY,	)	<b>NOTICE OF MOTION AND MOTION</b>
	)	<b>FOR LEAVE TO AMEND ANSWER AND</b>
APPLICANTS.	)	<b>COUNTERCLAIM</b>
	)	
	)	<b>[CONCURRENTLY-FILED FIRST</b>
	)	<b>AMENDED ANSWER TO NOTICE OF</b>
	)	<b>OPPOSITION AND FIRST AMENDED</b>
	)	<b>COUNTERCLAIM FOR</b>
	)	<b>CANCELLATION OF U.S.</b>
	)	<b>TRADEMARK REGISTRATION NOS.</b>
	)	<b>1,915,339, 2,853,226 AND 3,168,301]</b>

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TO CALIFORNIA CLOSET COMPANY, INC. AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT APPLICANTS CHARLES KENWORTHY AND TERRI KENWORTHY move this Board for leave pursuant to 37 C.F.R. §2.107 and Rule 15(a) of the Federal Rules of Civil Procedure to file a First Amended Answer to the Notice of Opposition and First Amended Counterclaim in this matter ("Applicant's Motion to Amend").

Applicants, Charles Kenworthy and Terri Kenworthy ("Applicants"), through their counsel, additionally oppose California Closet's ("Opposer") Motion For (Partial) Dismissal of Counterclaim For Cancellation of U.S. Trademark Registration Nos. 1,915,339; 2,853,226 and

3,168,301 ("Motion to Dismiss"), in part because the Motion to Dismiss is moot in light of Applicant's Motion to Amend and amended answer and counterclaim.

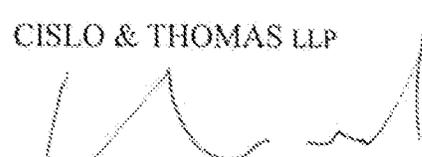
Pursuant to Trademark Trial and Appeal Board Manual of Procedure ("TBMP") §507.01, as signed copy of the proposed First Amended Answer and First Amended Counterclaim is concurrently-filed with this opposition and Motion to Amend.

The Motion to Amend is made on grounds that entry of the First Amended Answer and First Amended Counterclaim in this proceeding would further justice; would not violate settled law; would not be prejudicial to the rights of Opposer and would not be futile.

This opposition and Motion to Amend is based upon this Notice of Motion and the accompanying memorandum in support of the opposition and Motion to Amend.

Respectfully submitted,

CISLO & THOMAS LLP



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Daniel M. Cislo, Esq.  
Attorneys for Applicants,  
CHARLES KENWORTHY and  
TERRI KENWORTHY

Dated: March <sup>12<sup>th</sup></sup>, 2008

## I. INTRODUCTION

Applicants filed the applications at issue (Serial Nos. 76/670,880 for THE WELL-ORGANIZED LIFE and 76/670,902 for LIFE SIMPLY ORGANIZED) on December 28, 2006. Both applications were published in the Official Gazette on July 3, 2007. Opposer filed the instant opposition on October 31, 2007 and Applicants filed their answer to the notice of opposition and a counterclaim on December 10, 2007.

On February 21, 2008, Opposer filed a Motion For (Partial) Dismissal of Counterclaim For Cancellation of U.S. Trademark Registration Nos. 1,915,339; 2,853,226 and 3,168,301 (“Motion to Dismiss”) under Federal Rule 12(b) and its answer to the counterclaim, contending, *inter alia*, that applicants’ fraud claim was not pled with adequate specificity. For the reasons more fully set forth below, Applicants oppose the Motion to Dismiss and move to amend their answer to the notice of opposition and counterclaim. Applicants respectfully request that the Board deny Opposer’s Motion to Dismiss, grant Applicants’ Motion to Amend and enter the amended answer and counterclaim. In the alternative, Applicants respectfully request that the Board grant Applicants a reasonable amount time to perfect their affirmative defenses and counterclaim.

## II. REQUEST FOR LEAVE TO AMEND IS A PROPER RESPOSE TO A MOTION TO DISMISS

While Applicants otherwise oppose Opposer’s Motion to Dismiss and the contentions set forth therein, Applicants have filed an amended answer and counterclaim to clarify their affirmative defenses and counterclaim, which Applicant respectfully submits renders the Motion to Dismiss moot.

Parties to Board proceedings ordinarily may respond to a motion to dismiss by filing an amended complaint. See e.g., TBMP §503.03. If the amended pleadings correct the defects noted by the opposing party in its motion to dismiss and state a claim upon which relief can be granted, the motion to dismiss normally will be moot. Id. Further, even where a party does not submit an amended pleading in response to a motion to dismiss and the Board finds that the pleading fails to state a claim upon which relief can be granted, the Board generally will allow the party an opportunity to file an amended pleading. See e.g., Miller Brewing Co. v. Anheuser-Busch Inc., 27 USPQ2d 1711 (TTAB 1993).

**III. LEAVE TO AMEND SHOULD BE GRANTED BECAUSE THE AMENDMENT WOULD NOT VIOLATE SETTLED LAW, WOULD NOT BE PREJUDICIAL TO OPPOSER'S RIGHTS AND WOULD NOT BE FUTILE**

Rule 15(a) of the Federal Rules of Civil Procedure encourages courts to look favorably on motions to amend when justice so requires. See, Fed. R. Civ. P. 15(a). In deciding on such a motion, the Board will grant the motion unless entry of the proposed amendment would violate settled law or would be prejudicial to the adverse party. See, Boral Ltd. V. FMC Corp., 59 USPQ2d 1701, 1702 (TTAB 2000).

The timing of a motion for leave to amend plays a large role in the Board's determination of whether the adverse party would be prejudiced by allowance of the amendment. See e.g., Buffett v. Chi Chi's, Inc., 226 USPQ 428 (TTAB 1985)(no substantial prejudice to party by allowance of amendment where proceeding remained in a fairly early stage). In the instant case, the proceedings are well before the trial stage, with the discovery period currently set to close on May 18, 2008. Therefore, there will be no prejudice to Opposer by entry of the amendment. See

e.g., Cool-Ray, Inc. v. Eye Care, Inc., 183 USPQ 618 (TTAB 1974)(trial period had not yet commenced and no prejudice to opposing party).

In addition, the amendment is not futile. For example, a statement in a use-based application that the applied-for mark is being used on all of the goods listed in the application, or in a Section 8 affidavit or in a Section 9 application for renewal, that the mark is being used on all of the goods listed in the registration, when that statement is false, may give rise to a valid ground for fraud. See, Medinol Ltd. V. Neuro Vasx Inc., 67 USPQ2d 1205, 1208 (TTAB 2003). Further, if the elements of fraud even as to one of the goods listed in a registration is established, the entire registration is subject to cancellation. Fraud generally cannot be cured merely by deleting from the registration those goods on which the mark was not used at the time of signing a use-based application or Section 8 affidavit. See, Id.

In the instant case, the First Amended Counterclaim sets forth Applicants' fraud claim with particularity, including facts regarding the alleged false representation at issue, that the representation at issue were material, that Opposer knew or should have known that such representation was false and that Opposer intended to procure and maintain a registration to which it was not entitled by such false representation. Applicant's amended counterclaim complies with Federal Rule of Civil Procedure 9(b) in that it sets forth the circumstances of the alleged false representation (e.g., time, place, and content), the fact misrepresented and what was obtained as a consequence of the alleged fraud (see e.g., ¶¶10-23 of the concurrently-filed First Amended Counterclaim). Thus, Applicants' proposed counterclaim, including its fraud claim, is not futile and does not violate settled law.

In addition, the First Amended Answer similarly sets forth the affirmative defenses of fraud and unclean hands with particularity (see e.g., ¶¶13-19 of the First Amended Answer) and Applicants have amended the First Amended Counterclaim to delete “unclean hands” and to clarify that Applicants’ claim under Section 2(e)(1) of the Trademark Act applies to Opposer’s Registration Nos. 3,168,301 and 2,853,226 (see e.g., ¶9 of the First Amended Counterclaim).

Accordingly, because Applicants’ Motion to Amend its answer and counterclaims to cancel Opposer’s three pleaded registrations is timely and the affirmative defenses and counterclaims state valid claims, Applicants respectfully request that their Motion to Amend be granted.

#### IV. CONCLUSION

Entry of the First Amended Answer and First Amended Counterclaim would further justice, would not violate settled law, would not be prejudicial to the rights of Opposer, and would not be futile. Therefore, Applicants respectfully request that this Motion to Amend be GRANTED by the Board, that their First Amended Answer and First Amended Counterclaim be entered in this proceeding and that Opposer’s Motion to Dismiss be DENIED as moot. In the alternative, Applicants respectfully request that the Board grant them a reasonable amount of time to perfect their affirmative defenses and counterclaim.

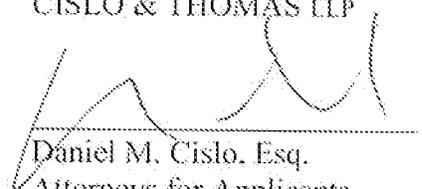
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It is not believed that any charges are due; however, please charge any additional charges that may be due to Applicant's representative's deposit account No. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP



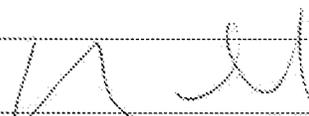
Daniel M. Cislo, Esq.  
Attorneys for Applicants,  
CHARLES KENWORTHY and  
TERRI KENWORTHY

Dated: March 12<sup>th</sup>, 2008

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**ELECTRONIC MAILING CERTIFICATE**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being submitted electronically through the Electronic System for the Trademark Trial and Appeal Board ("ESTTA") on the date shown below.

on  3-12-08  
Daniel M. Cislo, Reg. No. 32,973 3-12-08  
Date

**CERTIFICATE OF SERVICE**

I hereby certify that one (1) copy of this document is being deposited with the United States Postal Service as First Class Mail, postage affixed, in an envelope addressed to:

Marsha G. Gentner  
Jacobson Holman PLLC  
400 - 7th Street, N.W.  
Washington, DC 20004

Dated: 3-12-08

By:   
Daniel M. Cislo, Reg. No. 32,973

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

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**IN THE MATTER OF APPLICATION SERIAL NOS. 76/670,880, 76/670,902  
PUBLISHED IN THE OFFICIAL GAZETTE ON JULY 3, 2007**

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CALIFORNIA CLOSET COMPANY, INC.	)	<b>OPPOSITION NO. 91180462</b>
	)	
OPPOSER,	)	
vs.	)	<b>FIRST AMENDED ANSWER TO</b>
	)	<b>NOTICE OF OPPOSITION AND FIRST</b>
CHARLES KENWORTHY and TERRI	)	<b>AMENDED COUNTERCLAIM FOR</b>
KENWORTHY,	)	<b>CANCELLATION OF U.S.</b>
	)	<b>TRADEMARK REGISTRATION NOS.</b>
APPLICANTS.	)	<b>1,915,339, 2,853,226 AND 3,168,301</b>
	)	
	)	

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Pursuant to 37 C.F.R. 2.106, Applicants, Charles Kenworthy and Terri Kenworthy (“Applicants”), through their counsel, hereby answer Opposer’s Notice of Opposition (“Notice”) as follows:

1. As to the introduction paragraph set forth in the Notice, Applicants admit that they are the owners of Serial Nos. 76/670,880 for THE WELL-ORGANIZED LIFE mark and 76/670,902 for the LIFE SIMPLY ORGANIZED mark. Additionally, Applicants admit that Serial Nos. 76/670,880 and 76/670,902 were both filed with the United States Patent and Trademark Office (“USPTO”) on December 28, 2006 and published in *The Official Gazette* on July 3, 2007. Applicants deny that Opposer California Closet Company, Inc. will be damaged by registration of Serial Nos. 76/670,880 and 76/670,902. Applicants deny any remaining allegations set forth in the introductory paragraph.

2. Applicants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 1 of the Notice and, on that basis, deny each and every allegation set forth therein.

3. Applicants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 2 of the Notice and, on that basis, deny each and every allegation set forth therein.

4. Applicants admit that the USPTO database lists Opposer as the owner of Registration Nos. 1915339, 2853226 and 3168301 (hereinafter "The Subject Registrations"). Applicants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in Paragraph 3 of the Notice and, on that basis, deny each and every remaining allegation set forth therein.

5. Applicants admit that they filed trademark applications with the USPTO on December 28, 2006 for THE WELL-ORGANIZED LIFE and LIFE SIMPLY ORGANIZED marks that were assigned Serial Nos. 76/670,880 and 76/670,902, respectively. Applicants further admit that Serial Nos. 76/670,880 and 76/670,902 were published for opposition in *The Official Gazette* on July 3, 2007. Additionally, Applicants admit that the description of goods for Serial Nos. 76/670,880 and 76/670,902 is "kit comprising paper containers and file folders for arranging, compiling and storing important personal documents." Applicants lack sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations, and on that basis, deny any remaining allegations set forth in Paragraph 4.

6. Applicants deny each and every allegation set forth in Paragraph 5 of the Notice.

7. Applicants deny each and every allegation set forth in Paragraph 6 of the Notice.
8. Applicants deny each and every allegation set forth in Paragraph 7 of the Notice.
9. Applicants deny each and every allegation set forth in Paragraph 8 of the Notice.

WHEREFORE, Applicants pray that this opposition proceeding be dismissed as to Application Serial Nos. 76/670,880 and 76/670,902 and that their registrations issue forthwith.

Any and all other allegations and statements made by Opposer, other than those expressly admitted above, are hereby denied by Applicants.

#### **AFFIRMATIVE DEFENSES**

Applicants hereby assert the following affirmative defenses, reserving the right to modify and expand these affirmative defenses up to and throughout the time of final adjudication.

10. Paragraphs 1-9 of Applicants' Answer are hereby incorporated in their entirety to these affirmative defenses.
11. The Notice fails to state a claim upon which relief can be granted.

12. Opposer will not be damaged by registration of Applicants' marks.

13. Upon information and belief, at the time Opposer filed the application leading to Registration No. 1,915,339 (Application No. 74/541,660), Opposer was not using, and has never used, the SIMPLIFY YOUR LIFE mark on or in connection with retail services in the field of travel accessories. Therefore, on information and belief, when Opposer submitted its Combined Declaration of Use In Commerce/Application for Renewal to the USPTO stating that it was "using the mark in connection with the services listed in the existing registration", such information was false. In addition, upon information and belief, Opposer was not using, at the time it filed Application No. 74/541,660, and has never used, the SIMPLIFY YOUR LIFE mark on or in connection with franchising, namely, rendering technical assistance in the establishment and operation of businesses directed to the custom design, construction, repair and installation of closets and storage spaces. Therefore, on information and belief, when Opposer submitted its declaration with Application No. 74/541,660 stating that it had been using the SIMPLIFY YOUR LIFE mark since October 31, 1993 in commerce in connection with the recited Class 035 services therein and with retail store services in the field of travel accessories, such information was false.

14. Upon information and belief, Opposer misrepresented the nature of its use in commerce of the SIMPLIFY YOUR LIFE mark at the time it filed its declaration with Application No. 74/541,660 and at the time it submitted its Combined Declaration of Use In Commerce/Application for Renewal of Registration No. 1,915,339, and continued to prosecute and maintain its application/registration. Upon information and belief, Opposer procured and maintained Registration No. 1,915,339 by knowingly and willfully making false declarations and representations to the USPTO, including *inter alia*, falsely alleging in a declaration that Opposer used the mark for retail store services in the field of travel accessories, and services

for franchising, namely, rendering technical assistance in the establishment and operation of businesses directed to the custom design, construction, repair and installation of closets and storage spaces, when, on information and belief, Opposer did not at the time of filing its application and still does not use the mark for retail store services in the field of travel accessories, and did not at the time of filing, use its mark for franchising, namely, rendering technical assistance in the establishment and operation of businesses directed to the custom design, construction, repair and installation of closets and storage spaces. Upon information and belief, said false statements were made with the intent to induce authorized agents of the USPTO to grant Registration No. 1,915,339, and reasonably relying upon the truth of said false statements, the USPTO did grant Registration No. 1,915,339 to Opposer.

15. Upon information and belief, Opposer was aware, or reasonably should have been aware, at the time they were made, that the statements of use made in its Application No. 74/541,660 and in its Combined Declaration of Use In Commerce/Application for Renewal for Registration No. 1,915,339 were false.

16. Upon information and belief, Opposer was not using, and has never used, the SIMPLIFYING HOME AND LIFE mark on or in connection with custom construction and installation of storage space facilities and/or was not using and has never used, the SIMPLIFYING HOME AND LIFE mark on or in connection with franchising, namely, rendering technical assistance in the establishment and operation of businesses directed to the custom design, construction, repair and installation of closets and storage spaces. Therefore, on information and belief, when Opposer submitted its declaration for the application leading to U.S. Registration No. 2,853,226 to the USPTO stating that “[t]he mark was... ..first used in commerce in association with such services in each class at least as early as January 16,

2003, and is now in use in association with such services in each class in such commerce”, such statement was false.

17. Upon information and belief, Opposer misrepresented the nature of its use in commerce of the SIMPLIFYING HOME AND LIFE mark at the time it filed its declaration with Application No. 76/529,192 and continued to prosecute its application. Upon information and belief, Opposer procured Registration No. 2,853,226 by knowingly and willfully making false declarations and representations to the USPTO, including *inter alia*, falsely alleging in a declaration that Opposer was using the mark for custom construction and installation of storage space facilities and franchising, namely, rendering technical assistance in the establishment and operation of businesses directed to the custom design, construction, repair and installation of closets and storage spaces, when, on information and belief, Opposer did not then and still does not use the mark for custom construction and installation of storage space facilities or for franchising, namely, rendering technical assistance in the establishment and operation of businesses directed to the custom design, construction, repair and installation of closets and storage spaces. Upon information and belief, said false statements were made with the intent to induce authorized agents of the USPTO to grant Registration No. 2,853,226, and reasonably relying upon the truth of said false statements, the USPTO did grant Registration No. 2,853,226 to Opposer.

18. Upon information and belief, Opposer was aware, or reasonably should have been aware, at the time they were made, that the statements of use made in its Application No. 76/529,192 leading to Registration No. 2,853,226 were false.

19. In view of the foregoing, the opposition is barred by doctrines of fraud and unclean hands.

20. The opposition is also barred by the doctrine of laches, acquiescence, estoppel, mistake and/or prior judgment.

21. The Opposer has filed a Notice of Opposition against Applicants' Application Serial Nos. 76/670,880 and 76/670,902 alleging a likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d). Applicants affirmatively allege that there is no likelihood of confusion, mistake or deception between Applicants' marks that are the subject of the applications and Opposer's Marks because, *inter alia*, Applicants' marks and Opposer's Marks are not confusingly similar.

22. Applicant affirmatively alleges that there is no likelihood of confusion, mistake or deception between Applicants' subject marks and Opposer's Marks because, *inter alia*, the goods/services listed in the application, i.e., "kit comprising paper containers and file folders for arranging, compiling and storing important personal documents" are different and unrelated to the goods and services in connection with which Opposer uses Opposer's Marks, and are not marketed in the same channels of trade or to the same customers.

23. In view of the foregoing, there is no likelihood of confusion pursuant to Section 2(d) of the Lanham Act, 15 USC §1052(d), between the marks that are the subject of Applicants' Serial Application Nos. 76/670,880 and 76/670,902 and any or all of the marks asserted by Opposer.

WHEREFORE, Applicants pray that the Opposition against Application Serial Nos. 76/670,902 and 76/670,880 be dismissed in its entirety and that registrations issue to Applicants for their marks.

Any and all allegations and statements made by Opposer other than those expressly admitted above, are hereby denied by Applicants.

**COUNTERCLAIM/PETITION FOR CANCELLATION OF U.S.  
REGISTRATION NOS. 1,915,339, 2,853,226 and 3,168,301**

Pursuant to 37 CFR 2.106, Applicants/Petitioners Charles Kenworthy and Terri Kenworthy (hereinafter "Applicants"), believe that they are or will be damaged by continued registration of the marks that are the subjects of U.S. Registration Nos. **1,915,339, 2,853,226 and 3,168,301** and hereby petition to cancel the same.

As grounds for cancellation it is alleged that:

1. Applicants hereby petition to cancel U.S. Reg. Nos. **1,915,339, 2,853,226 and 3,168,301** (hereinafter the "Subject Registrations") for Opposer/Registrant's pleaded **SIMPLIFY YOUR LIFE, SIMPLIFYING HOME AND LIFE and WHEN YOU ORGANIZE YOUR HOME YOU SIMPLIFY YOUR LIFE** marks (hereinafter the "Subject Marks").

2. On or about October 31, 2007, California Closet Company, Inc., upon information and belief a California corporation having principal offices at 1000 Fourth Street, Suite 800, San Rafael, California 94901, (hereinafter "California Closet Company" or

“Opposer”) filed a Notice of Opposition against Applicant’s pending applications for THE WELL-ORGANIZED LIFE mark, (Serial No. 76/670,880), and for the LIFE SIMPLY ORGANIZED mark (Serial No. 76/670,902) on the basis of U.S. Registration Nos. 1,915,339, 2,853,226 and 3,168,301.

3. The description of services for U.S. Registration No. 1,915,339 for the SIMPLIFY YOUR LIFE mark recites, “Custom construction and installation of closets and storage space facilities” in International Class 037 and “Design services in the field of customized closets and storage space and retail store services in the field of closet, storage, space, household and travel accessories, in International Class 042.

4. The description of services for U.S. Registration No. 2,853,226 for the SIMPLIFYING YOUR HOME AND LIFE mark recites, “Franchising services, namely, rendering technical assistance in the establishment and operation of business directed to the custom design, construction, repair and installation of closets and storage space,” in International Class 035, “Custom construction and installation of closets and storage space facilities” in International Class 037 and “Design services in the field of customized closets and storage space,” in International Class 042.

5. The description of services for U.S. Registration No. 3,168,301 for the WHEN YOU ORGANIZE YOUR HOME YOU SIMPLIFY YOUR LIFE mark recites, “Custom construction and installation of closets, utility and pantry shelving, garage interiors, cabinets,

media units, and shelving, home offices, wall systems, and storage space systems” in International Class 037 and “Design services in the field of customized closets, utility and pantry shelving, garage interiors, cabinets, media units and shelving, home offices, wall systems, and storage space; space management design,” in International Class 042.

6. Opposer has not adequately policed its marks and/or has abandoned the Subject Marks due to a course of conduct that has caused the Subject Marks to lose all significance as an indicator of source.

7. Applicant further alleges that the Subject Marks, whether by Opposer’s acts or omissions, have lost their significance as marks in connection with the services specified in the Subject Registrations, such that the Subject Marks have become generic for the services specified in the Subject Registrations.

9. The marks that are the subjects of U.S. Registration Nos. 3,168,301 and 2,853,226 are descriptive of a feature and/or function of the services recited therein and are without secondary meaning such that the marks that are the subjects of U.S. Registration Nos. 3,168,301 and 2,853,226 are merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

10. On June 21, 1994, Opposer filed application No. 74/541,660 for registration on the Principal Register for the SIMPLIFY YOUR LIFE mark for custom construction and

installation of closets and storage space facilities in International Class 037; design services in the field of customized closets and storage space and retail store services in the field of closet, storage space, household and travel accessories in International Class 042; and franchising, namely, rendering technical assistance in the establishment and operation of businesses directed to the custom design, construction, repair and installation of closets and storage spaces in International Class 035.

11. Application No. 74/541,660 matured into Registration No. 1,915,339 on August 29, 1995.

12. Upon information and belief, in 2001, Opposer cancelled the Class 035 services from Registration No. 1,915,339.

13. Upon information and belief, on or about August 29, 2005, Opposer submitted a sworn declaration (dated March 22, 2005), entitled Combined Declaration of Use In Commerce/Application for Renewal, to the USPTO in which Opposer stated that it was “using the mark [SIMPLIFY YOUR LIFE] in commerce in connection with all of the services listed in the existing registration.”

14. Upon information and belief, Opposer was not using, and has never used, the SIMPLIFY YOUR LIFE mark on or in connection with retail services in the field of travel accessories. Therefore, on information and belief, when Opposer submitted its Combined

Declaration of Use In Commerce/Application for Renewal for Registration No. 1,915,339 to the USPTO stating that it was “using the mark in connection with the services listed in the existing registration”, such information was false. In addition, upon information and belief, Opposer was not using, at the time it filed Application No. 74/541,660, and has never used, the SIMPLIFY YOUR LIFE mark on or in connection with franchising, namely, rendering technical assistance in the establishment and operation of businesses directed to the custom design, construction, repair and installation of closets and storage spaces. Therefore, on information and belief, at the time Opposer submitted its declaration with Application No. 74/541,660 indicating it had been using the mark SIMPLIFY YOUR LIFE mark since October 31, 1993 in commerce in connection with the recited Class 035 services and with retail store services in the field of travel accessories, such information was false.

15. Upon information and belief, Opposer misrepresented the nature of its use in commerce of the SIMPLIFY YOUR LIFE mark at the time it filed its declaration with Application No. 74/541,660 and at the time it submitted its Combined Declaration of Use In Commerce/Application for Renewal of Registration No. 1,915,339, and continued to prosecute and maintain its application/registration. Upon information and belief, Opposer procured and maintained Registration No. 1,915,339 by knowingly and willfully making false declarations and representations to the USPTO, including *inter alia*, falsely alleging in a declaration that Opposer’s first use of the mark for retail store services in the field of travel accessories, and services for franchising, namely, rendering technical assistance in the establishment and operation of businesses directed to the custom design, construction, repair and installation of

closets and storage spaces, when, on information and belief, Opposer did not then and still does not use the mark for retail store services in the field of travel accessories, and did not at the time of filing, use its mark for franchising, namely, rendering technical assistance in the establishment and operation of businesses directed to the custom design, construction, repair and installation of closets and storage spaces. Upon information and belief, said false statements were made with the intent to induce authorized agents of the USPTO to grant Registration No. 1,915,339, and reasonably relying upon the truth of said false statements, the USPTO did grant Registration No. 1,915,339 to Opposer.

16. Upon information and belief, Opposer was aware, or reasonably should have been aware, at the time they were made, that the statements of use made in its Application No. 74/541,660 and in its Combined Declaration of Use In Commerce/Application for Renewal for Registration No. 1,915,339 were false.

17. In view of the above allegations, Opposer is not entitled to continued registration of its alleged mark since Opposer committed fraud in the procurement of Registration No. 1,915,339.

18. On July 14, 2003, Opposer filed application No. 76/529,192 for registration on the Principal Register for services in International Classes 035, 037 and 042. The Class 035 and Class 042 services included, respectively, franchising, namely, rendering technical assistance in the establishment and operation of businesses directed to the custom design,

construction, repair and installation of closets and storage spaces; and custom construction and installation of storage space facilities.

19. Application No. 76/529,192 matured into Registration No. 2,853,226 on June 15, 2004.

20. Upon filing Application No. 76/529,192 on or about July 14, 2003, Opposer submitted a sworn declaration to the USPTO in which Opposer stated that it was using the SIMPLIFYING HOME AND LIFE mark in commerce in connection with the services listed in the application since January 16, 2003.

21. Upon information and belief, Opposer was not using at the time of filing Application No. 76/529,192, and has never used, the SIMPLIFYING HOME AND LIFE mark on or in connection with custom construction and installation of storage space facilities and/or was not using and has never used, the SIMPLIFYING HOME AND LIFE mark on or in connection with franchising, namely, rendering technical assistance in the establishment and operation of businesses directed to the custom design, construction, repair and installation of closets and storage spaces. Therefore, on information and belief, when Opposer submitted its declaration to the USPTO stating that “[t]he mark was... ..first used in commerce in association with such services in each class at least as early as January 16, 2003 and is now in use in association with such services in each class in such commerce”, such information was false.

22. Upon information and belief, Opposer misrepresented the nature of its use in commerce of the SIMPLIFYING HOME AND LIFE mark at the time it filed its declaration with Application No. 76/529,192 and continued to prosecute its application. Upon information and belief, Opposer procured Registration No. 2,853,226 by knowingly and willfully making false declarations and representations to the USPTO, including *inter alia*, falsely alleging in a declaration that Opposer was using the mark for custom construction and installation of storage space facilities; and for franchising, namely, rendering technical assistance in the establishment and operation of businesses directed to the custom design, construction, repair and installation of closets and storage spaces, when, on information and belief, Opposer did not then and still does not use the mark for custom construction and installation of storage space facilities or for franchising, namely, rendering technical assistance in the establishment and operation of businesses directed to the custom design, construction, repair and installation of closets and storage spaces. Upon information and belief, said false statements were made with the intent to induce authorized agents of the USPTO to grant Registration No. 2,853,226, and reasonably relying upon the truth of said false statements, the USPTO did grant Registration No. 2,853,226 to Opposer.

23. Upon information and belief, Opposer was aware, or reasonably should have been aware, at the time they were made, that the statements of use made in its Application No. 76/529,192 were false.

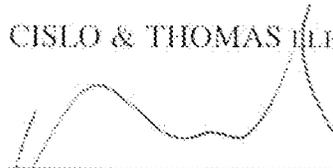
WHEREFORE, Applicants/Petitioners pray that their petition to cancel U.S. Registration Nos. 1,915,339, 2,853,226 and 3,168,301 be sustained in its entirety and granted in favor of Applicant/Petitioner and that U.S. Registration Nos. 1,915,339, 2,853,226 and 3,168,301 be cancelled. Applicant additionally asks that this opposition proceeding be dismissed as to both Application Serial No. 76/670,880 and Application Serial No. 76/670,902 and that their registrations issue forthwith.

It is not believed that any charges are due; however, please charge any additional charges that may be due to Applicant's representative's deposit account No. 03-2030.

Dated: March 12, 2008

Respectfully submitted,

CISLO & THOMAS LLP



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**ELECTRONIC MAILING CERTIFICATE**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being submitted electronically through the Electronic System for the Trademark Trial and Appeal Board ("ESTTA") on the date shown below.

on 3-12-08  
Daniel M. Ciso, Reg. No. 32,973 3-12-08  
Date

**CERTIFICATE OF SERVICE**

I hereby certify that one (1) copy of this document is being deposited with the United States Postal Service as First Class Mail, postage affixed, in an envelope addressed to:

Marsha G. Gentner  
Jacobson Holman PLLC  
400 - 7th Street, N.W.  
Washington, DC 20004

Dated: 3-12-08

By: Daniel M. Ciso, Reg. No. 32,973

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