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

Proceeding	91182396
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/158,037
For the Mark FULL WAVE AUDIO
Published in the Official Gazette on October 16, 2007

Bose Corporation,

Opposer,

v.

PWC Industries Inc.,

Applicant.

Opposition No. 91182396

REPLY BRIEF OF OPPOSER BOSE CORPORATION

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ARGUMENT

I. PWC ERRONEOUSLY STATES “OPPOSER DID NOT ALLEGE LIKELIHOOD OF CONFUSION IN THE NOTICE OF OPPOSITION” BECAUSE THE FIRST PAGE OF THE NOTICE UNDER THE HEADING “GROUNDS FOR OPPOSITION” STATES “PRIORITY AND LIKELIHOOD OF CONFUSION”

PWC begins its legal argument A under the heading stating, “Opposer did not allege likelihood of confusion in the Notice of Opposition.” PWC Br. 10. But the first page of the Notice of Opposition under the heading “Grounds for Opposition” states “Priority and Likelihood of Confusion.”

II. “WAVE” IS THE SALIENT FEATURE OF THE PWC “FULL WAVE AUDIO” MARK FOR AUDIO PRODUCTS THAT IS CONFUSINGLY SIMILAR TO THE INCONTESTABLY REGISTERED FAMOUS BOSE “WAVE” AND “ACOUSTIC WAVE” MARKS FOR AUDIO PRODUCTS

PWC does not dispute that the Bose WAVE and ACOUSTIC WAVE marks are famous, and “thus enjoy a wide latitude of legal protection.” *Eveready Battery Co. v. Green Planet, Inc.*, 91 USPQ2d 1511, 1516 (TTAB 2009); *Recot, Inc. v. M.C. Becton*, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000) (citations omitted). Bose Br. 12-15. Nor does PWC dispute that the PWC FULL WAVE AUDIO, Bose WAVE¹ and Bose ACOUSTIC WAVE goods are both audio products. PWC Br. 1-29.

PWC argues that the marks differ in connotation. PWC Br. 14-16. However, the salient feature of the FULL WAVE AUDIO mark is “WAVE”, and is confusingly similar to the famous Bose WAVE and ACOUSTIC WAVE marks, as also used on audio goods. Bose Br. 15-17.

¹ *In Bose Corp. v. Hexawave, Inc.*, 88 USPQ2d 1332 (TTAB 2007) the Board ordered cancellation of the WAVE registration while sustaining the opposition to registration of HEXAWAVE. Bose appealed the cancellation order, which is awaiting decision. *In re Bose Corp.* (Fed. Cir. No. 2008-1448).

III. NEITHER THE BOSE REGISTRATIONS NOR THE PWC APPLICATION LIMIT THE CHANNELS OF TRADE OR PURCHASERS

Neither the PWC application nor the Bose registrations contain any limitation on channels of trade or intended purchasers. The channels of trade and potential purchasers for both Bose and PWC audio products are the same. *See Bose Corporation v. QSC Audio Products, Inc.*, 63 USPQ2d 1303, 1310-11 (Fed. Cir. 2000). Bose Br. 21-22. Moreover, there is evidence that PWC and Bose audio products are sold in the same store. PWC witness, Mr. Richardson, testified that the music store in which he previously worked sold both the PWC FULL WAVE AUDIO and Bose audio products:

- Q. Are you aware of anyone who has thought that PWC Industries' Full Wave Audio product originated with Bose?
- A. Absolutely not. We even carried them at the music store I worked at, and at the time we were selling used Bose products.

Richardson Deposition, 22:18-22.

IV. ANY DOUBT AS TO LIKELIHOOD OF CONFUSION SHOULD BE RESOLVED AGAINST PWC

Any doubt should be resolved against PWC who adopted FULL WAVE AUDIO similar to the WAVE and ACOUSTIC WAVE marks for similar audio products. Bose Br., 22-23.

CONCLUSION

For the reasons set forth above and in our brief, the opposition should be sustained.

Respectfully submitted,

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Date: August 17, 2009

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CERTIFICATE OF SERVICE

This is to certify that on this 17th day of August 2009, a true copy of the REPLY BRIEF OF OPPOSER BOSE CORPORATION has been sent by First Class mail, postage prepaid to the below-identified counsel for Applicant, at his place of business:

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