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

Proceeding	91185033
Party	Defendant Harpole, William A.
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Submission	Reply in Support of Motion
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Attachments	2009-01-03 19-0 THE PERFECT SEASON MJP Reply - FINAL.pdf (4 pages)(29744 bytes)

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

Kraft Group LLC Opposer, v. Harpole, William A., Applicant.	Opposition No. 91185033 Application Serial No. 77324426 Mark: 19-0 THE PERFECT SEASON

APPLICANT'S REPLY BRIEF IN SUPPORT OF APPLICANT'S CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS

Comes now Applicant and hereby replies in support of his Cross-Motion For Judgment On The Pleadings. In support of its reply, Applicant states the following:

Opposer's Response to Applicant's Cross-Motion and Reply In Support of Opposer's Motion presents no on point Trademark Rule, statute, or case law to support its position and disputes no facts Applicant presented in his Cross-Motion. Instead, Opposer reiterates it circuitous argument that an applicant who initially *intends* to register a mark on the Supplemental Register should never be granted the opportunity to amend that initial choice, and that 37 C.F.R. § 2.47(a) mandates that all of the requirements for registration of a mark must be satisfied prior to initial submission of the application. *See Opposer's Response and Reply, pages 2-9*. Neither of Opposer's positions is supported by the Trademark Rules or any case law, despite Opposer's circuitous and long-winded argument. In fact, the rules that govern this case can be most easily drawn out through a simple timeline of Application S/N 77324426, as follows:

1. On November 8, 2007, Applicant filed an *intent-to-use* application on the *Supplemental Register*. Applicant satisfied the minimum filing requirements to receive a filing date on either the Principal or Supplemental Register as well as the

TEAS electronic form filing requirements, and the application was accepted by the USPTO and assigned a Serial Number.

2. On February 27, 2008, the Examining Attorney sent Applicant an Office Action refusing registration of the mark on the Supplemental Register. The Office Action presented Applicant with two choices. Applicant could either (a) amend the mark to the Principal Register, or (b) submit evidence of use, and amend the basis of the mark to 1(a). Selecting either of these choices would allow Applicant to clarify his initial intent, and conclusively state whether he intended to register the mark under 1(b) on the Principal Register, or under 1(a) on the Supplemental Register. The Office Action did not indicate that either choice would result in a change of the filing date, nor did it discuss any possibility of either choice resulting in a voided application. Additionally, the Examining Attorney noted that the mark likely was not registrable on the Supplemental Register because it was not descriptive of the goods, and indicated that if Applicant submitted evidence of use and amended the basis to 1(a) to allow registration on the Supplemental Register, the Examining Attorney would likely issue a second Office Action refusing registration on the Supplemental Register.
3. On April 22, 2008, Applicant responded to the Office Action by amending the mark to the Principal Register.

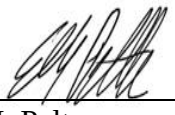
These three steps describe the totality of the factual framework surrounding Applicant's application. Opposer's reference to Applicant's *intent*, Opposer's reference to the statutory requirements for *registration* on the Supplemental Register, and Opposer's reference to the operation of the electronic application filing system are each irrelevant distractions, designed to muddle the issue and make unclear the issue before the Board. Opposer's reference to the

Medinol case regarding fraud is misplaced; Opposer has not pleaded any allegation of fraud. Similarly, Opposer's discussion of 37 C.F.R. § 2.47(d) is moot as it relates to *registration* requirements, rather than application or filing date requirements.

The issue before the Board is simply whether the application, consisting of both a request for registration under 1(b) and a request for registration on the Supplemental Register met the minimum filing requirements for an Application. The Trademark Rules do not state that an application has to be perfect, or even substantially correct when it is filed, merely that the application must meet certain minimum requirements that allow it to be properly examined. *37 CFR § 2.21* (requirements for receiving a filing date for §1 and §44 applications); *37 CFR §2.47(e)* (the requirements for filing and application for the the Principal Register will apply to filing for the Supplemental Register) . The Trademark Rules also do not prohibit amendment from the Supplemental Register to the Principal Register, and do not require a change in filing date from the receipt date of the application in such a case. *37 CFR §2.75 (a).* None of Opposer's arguments can alter the fact that Applicant's application met the statutory minimum requirements for receiving a filing date and properly received one.

WHEREFORE, Applicant respectfully requests that the Board enter judgment on the pleadings in favor of Applicant and dismiss the Opposition with prejudice.

Dated this 3rd day of January, 2009.



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of APPLICANT'S REPLY BRIEF IN SUPPORT OF APPLICANT'S CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS has been served on the following by delivering said copy on January 3, 2009, via First Class Mail, postage prepaid, to counsel for Opposer at the following address:

Rachelle A. Dubow, Esq.
Bingham McCutchen LLP
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By: 
Erik M. Pelton, Esq.