

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

Keith Clark, Opposer	)	Opposition No. 91189678
	)	
vs.	)	Application Serial No. 77179925
	)	
Waterford Wedgwood, PLC, Original Applicant	)	Mark: <i>The Waterford Crystal Pavilion</i>
	)	Published in the Official Gazette on March 10, 2009



06-09-2009

**MOTION TO STRIKE & DISMISS**

U.S. Patent & TMO Form TM Trial Popt. 0. #0.

Opposer, Keith Clark ("Clark"), pursuant to Fed. R. Civ. P. 12(f), files this Motion to Strike the Answer submitted in this Opposition proceeding by Waterford Wedgwood, PLC ("WW") (nominally the original "Applicant") and that of WWRD Ireland IPCO LLC ("WWRD"), apparent Intervenor as it appears in the caption of Defendant(s)' Answer. It is requested that both parties be dismissed from this proceeding and the registration of the above-referenced mark be dismissed with prejudice. Intervenor defines no capacity to maintain this action and is not a real party in interest under Fed. R. Civ. P. 17(a). This motion is based on the Opposition Notice, Answer, and the Memorandum of Points and Authorities in Support of This Motion to Strike & Dismiss, attached.

As detailed in the supporting Memorandum accompanying this Motion, the purported "Answer" to Clark's Opposition was filed in the captioned name of "WWRD Ireland IPCO LLC." This party has no standing in this proceeding; rather, only the original applicant, Waterford Wedgwood, PLC, arguably had

standing at one time, but even that standing is now called into serious question and it appears WW has abandoned this application in favor of WWRD.<sup>1</sup>

Hence, it is requested that the Answer be stricken as improperly filed since the intervening defendant/party – namely, WWRD – has not qualified under Rule 24 and WWRD should also be dismissed as a party for the same reason.

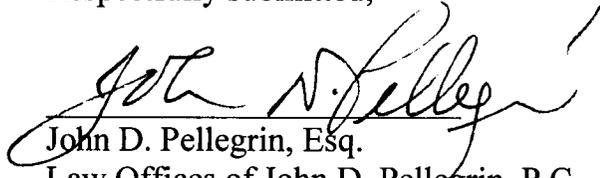
Additional procedural matter. As noted in the attached Memorandum in support of this Motion, the TTAB issued a Discovery Schedule under date of April 10, 2009. A scheduling conference is due to be held between the parties' counsel by June 19, 2009, but with the pendency of this Motion and the companion Motion for Default, and Opposer not knowing which if either party (WWRD and/or WW) is purportedly prosecuting the pending application and is the Defendant, discovery cannot realistically proceed.

WHEREFORE, Opposer respectfully requests that WWRD be dismissed as a party and that the Answer filed by WW be stricken. Further, it is requested that the registration application be dismissed on the grounds that neither the purported applicant, Waterford Wedgwood, PLC nor WWRD Ireland IPCO LLC have standing to maintain the above-captioned trademark application for registration. Grant of this Motion will expedite resolution of this matter and conserve the USPTO's as well as the Opposer's and others resources.

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<sup>1</sup> A companion "Motion for Default" for failure to timely file the requisite Answer by WWRD is being simultaneously filed herewith. See also Opposer's Notice of Opposition dated April 2, 2009 for details as to the bankruptcy proceeding and relevant attachments thereto.

Respectfully submitted,



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Counsel for Keith Clark  
Dated: June 5, 2009

CERTIFICATE OF SERVICE

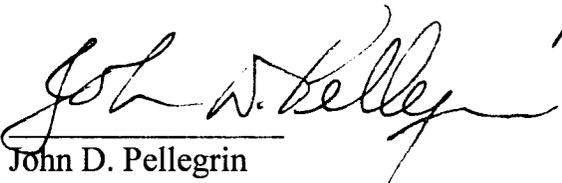
I, John D. Pellegrin, Esq., hereby certify that a true and complete copy of this Motion to Strike & Dismiss and Memorandum in Support of Motion to Strike & Dismiss were mailed, First Class U.S. Mail, postage prepaid, to the following on this 5<sup>th</sup> day of June, 2009:

Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
Madison East, Concourse Level  
Room C55  
600 Dulany Street  
Alexandria, VA 22314  
Attention: Lalita R. Greer, Paralegal Specialist

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**MEMORANDUM IN SUPPORT OF MOTION TO STRIKE & DISMISS**

In Support of Opposer's Motion to Strike & Dismiss, Opposer respectfully submits the following:

The Motion this Memorandum accompanies is filed on the grounds that the Applicant of record for the mark in question (Waterford Wedgwood, PLC) ("WW") is not the party in the caption of the purported Answer (WWRD Ireland IPCO LLC ("WWRD")), nor do either have standing to prosecute the above-captioned trademark registration application for two basic reasons: 1. Applicant has sought bankruptcy protection and to the best of Opposer's information, knowledge and belief, has been adjudicated bankrupt; and 2. the referenced/captioned party in the purported Answer of "Applicant" (WWRD), is not the Applicant – rather, it is a third party with no known/revealed by either of the entities as to affiliation to the purported Applicant. Fed. R. Civ. P. 12(f) may be and is invoked.

Neither entity has standing to prosecute the pending above-referenced trademark registration. application. within the meaning of the Lanham Act, 15 U.S.C.A. Sect. 1052(a) et seq., nor the USPTO's Rules. 5 U.S.C.A. Sect. 702 (a party entitled to review is one suffering legal wrong because of an adverse action by an agency within the meaning of a relevant statute). Fed. R. Civ. P. 17(a) also applies in that apparent Intervenor WWRD does not show any capacity to maintain this action. Hence, the TTAB and USPTO should dismiss the application for registration of the above-captioned mark in International Class 43, as requested by Opposer, Clark. Such dismissal can give no rise to either WWRD Ireland IPCO LLC nor Waterford Wedgwood, PLC being aggrieved, as neither party has standing to object

This Motion is made on the grounds that the Applicant on record for the mark in question is Waterford Wedgwood, PLC and not the party in the caption of the purported Answer; i.e., WWRD Ireland IPCO LLC. As will be noted below, since the Applicant has been adjudicated bankrupt, neither it nor WWRD have standing to prosecute the pending above-referenced trademark registration. application. Hence, neither party is aggrieved, injured or adversely affected by dismissal of the above-referenced pending registration application within the meaning of the Lanham Act, 15 U.S.C.A. Sect. 1052(a) et seq., the USPTO's Rules; see also 5 U.S.C.A. Sect. 702.

The purported “Answer” to Clark’s Opposition was filed in the captioned name of “WWRD Ireland IPCO LLC.” This party has no standing in this proceeding – as an Intervenor or otherwise; rather, only the original applicant, Waterford Wedgwood, PLC, had standing, but even that standing is now called into serious question as it appears WW has abandoned this application in favor of WWRD.<sup>1</sup>

The USPTO issued a procedural letter on April 10, 2009 as to how this Opposition proceeding would be conducted. The USPTO’s letter is captioned as “KEITH CLARK V. WWRD IRELAND IPCO LLC.” It was directed not only to counsel for Clark, but to a Hayley M. Smith, Kirkland & Ellis, LLP, who presumably is counsel for WWRD, the entity named in the caption by Defendant WW’s counsel filing its Answer. The USPTO web site also lists the Defendant in this Opposition proceeding as “WWRD Ireland IPCO LLC.” The “Answer” filed May 20, 2009 contained this same above-named entity in the caption, (which at best is a third party and not a party to this Opposition proceeding). The Answer commences with “Applicant Waterford Wedgwood, PLC (“Applicant”) . . . “ and is filed by original counsel for the Applicant of record – WW – with the firm of Buchanan Ingersoll & Rooney P.C. This is at best most confusing, and realistically calls into question who is the Applicant and does the Applicant itself still have

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<sup>1</sup> A companion “Motion for Default” for failure to timely file the requisite Answer by WWRD is being simultaneously filed herewith. See also Opposer’s Notice of Opposition dated April 2, 2009 for details as to the bankruptcy proceeding and relevant attachments thereto.

standing to address the issues raised by Clark. The Applicant has been adjudicated bankrupt (as conceded in the Answer; "Applicant admits filing for bankruptcy protection" at para. 6). Simply put, the captioned Defendant WWRD is not the Applicant and neither Defendant WWRD nor the purported Applicant, WW, make any representations as to any affiliation/successor in interest as between the two of these separate entities. Hence neither has standing to participate in this Opposition proceeding.

The captioned entity is clearly not the Applicant. There has been no filing with the USPTO even attempting to substitute one entity for another. Hence, there is no legitimate party prosecuting the above-captioned registration application.

Additional procedural matter. The TTAB issued a Discovery Schedule under date of April 10, 2009. A scheduling conference is due to be held between the parties' counsel by June 19, 2009, but with the pendency of this Motion and the companion Motion for Default, and Opposer not knowing which if either party (WWRD and/or WW) is purportedly prosecuting the pending application and is the Defendant, discovery cannot realistically proceed.

WHEREFORE, Opposer respectfully requests that this registration application be dismissed on the grounds that neither the purported applicant, Waterford Wedgwood, PLC nor WWRD Ireland IPCO LLC have standing to maintain the above-captioned trademark application for registration. Grant of this

Motion will expedite resolution of this matter and conserve the USPTO's as well as the Opposer's and others resources.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John D. Pellegrin".

/ John D. Pellegrin, Esq.

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Dated: June 5, 2009