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

Proceeding	91197103
Party	Defendant Star Vector Corporation
Correspondence Address	STAR VECTOR CORPORATION STAR VECTOR CORPORATION 17 MCAFEE FARM RD BEDFORD, NH 03110-4637  proxy@comcast.net
Submission	Motion to Dismiss - Rule 12(b)
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Date	12/03/2010
Attachments	motion_to_dismiss.pdf ( 3 pages )(11727 bytes )

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

Sporting Supplies International, Inc.,	)	
	)	Opposition No.: 91197103
Opposer,	)	Application Serial No.: 77879351
	)	Mark: GOLDEN TIGER
v.	)	
	)	
Star Vector Corporation,	)	
	)	
Applicant.	)	
	)	

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

1. Opposer Sporting Supplies International, Inc. states in its Notice of Opposition that its grounds for opposition are priority and likelihood of confusion under Trademark Act section 2(d).
2. In its Notice, Opposer further demonstrates that its claimed priority arises from the filing date of Opposer's intent-to-use application.
3. Opposer's intent-to-use application was filed on October 19, 2009 and Applicant's use application was filed on November 23, 2009.
4. The record reflects that Applicant has established its date of first use as January 11, 2001 and its date of first use in commerce as November 22, 2006.

5. The issuance of Opposer's Notice of Allowance dated May 18, 2010 shows that Opposer does not have a first use date or a use in commerce date.
6. Thus, to the extent that Applicant has a prior date of first use and a prior date of first use in commerce, Applicant has established priority of use over Opposer's mark.
7. "The exclusive right of the use of a trade-mark is the priority of appropriation, that is, the claimant of a trade-mark must have been the first to use or employ the same on like goods." Hygienic Products Co. v. Judson Dunaway Corp., 81 F. Supp. 935, 940 (D.N.H. 1948), relying upon Trade-Mark Cases, 100 U.S. 82, 94, 25 L.Ed. 550; Columbia Mill Co. v. Alcorn, 150 U.S. 460, 464, 14 S.Ct. 151, 37 L.Ed. 1144.
8. A trademark "right grows out of use, not mere adoption" of the trademark. Hanover Star Milling Company v. Metcalf, 240 U.S. 403, 413 (1916), as cited by Raxton Corp. v. Anania Associates, Inc., 635 F.2d 924, 927 (1<sup>st</sup> Cir. Mass. 1980).
9. Opposer has not pled priority of use in accordance with Trademark Act section 2(d), because it does not have priority of use.
10. Priority of use is an element to proving likelihood of confusion.
11. Since Opposer does not have priority of use, it cannot establish likelihood of confusion.
12. Opposer has failed to state a claim upon which relief may be granted.

WHEREFORE, Applicant respectfully prays this Honorable Board:

- A. To grant Applicant's Motion to Dismiss; and
- B. Dismiss the Opposition against Applicant's trademark application.

Respectfully submitted,  
Star Vector Corporation,  
by its attorney,

Dated: 12/03/2010

/robert r deleault/

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Applicant's Motion to Dismiss has been served by mailing said copy on December 3, 2010, via First Class Mail, postage prepaid to:

Richard J. Schwarzstein, Esq.  
Law Office of Richard Schwarzstein  
1151 Dove Street  
Newport Beach, CA 92660

          /robert r deleault/            
Robert R. Deleault, Esq.