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

Proceeding	91199922
Party	Plaintiff Christopher A McGrath
Correspondence Address	CHRISTOPHER MCGRATH McG PRODUCTIONS LTD 22 ST JOHN STREET NEWPORT PAGNELL MILTON KEYNES, MK16 8HJ UNITED KINGDOM legal@mcgproductionsltd.com
Submission	Opposition/Response to Motion
Filer's Name	MR CHRISTOPHER MCGRATH
Filer's e-mail	legal@mcgproductionsltd.com
Signature	/CAMCGRATH/
Date	08/24/2012
Attachments	OPPOSER REPLY TO APPLICANT MOTION TO STRIKE 24 AUGUST 2012.pdf (4 pages)(159061 bytes)

10-05-2012

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

OPPOSER'S REPLY TO APPLICANT'S MOTION TO STRIKE OPPOSER'S AMENDED NOTICE OF OPPOSITION AND TO DISMISS OPPOSITION WITH PREJUDICE PURSUANT TO RULE 12(E) FED.R.CIV.P. AND BRIEF IN SUPPORT OF MOTION

Opposer Information

Name: Mr Christopher A McGrath

Entity: Individual: Citizenship UNITED KINGDOM
Address: 22 St John Street McG Productions Ltd
Newport Pagnell, BUCKS, MK16 8JH UNITED KINGDOM

Correspondence information:
Mr. Christopher McGrath
McG productions Ltd
22 St John Street Newport Pagnell
Milton Keynes, BUCKS, MK16 0EN UNITED KINGDOM
legal@mcgproductionsltd.com Phone:+44(0)7815001450

Applicant Information
Application No 85053714 Publication date 05/03/2011
Applicant Nike, Inc.
One Bowerman Drive, DF4
Beaverton, OR 97005 UNITED STATES

1. The Applicant has stated, again, that it is still not at all clear to what averments NIKE is supposed to respond. With respect, this is a specious claim. The Board itself was able to determine in previous pleadings exactly those grounds upon which standing, priority and likelihood of confusion were held to be valid. It is untenable that counsel for Nike is unable likewise to see the very simple and clear basis of these allegations.

2. The Applicant states Opposer embeds evidence at page 2. No embedding of evidence takes place; there are simply allegations that are given logical grounds for opposition by *reference* to alleged facts. If there is another English language definition of embedding to which the Applicant refers, Opposer is not aware of it, nor, in the interests of access to justice, should this matter be determined by reference to special legal terminology in the pleading stages that ordinary citizens should be required to know.

3. The Applicant states Opposer's amended pleading contains numerous citations to case law in support of Opposer's allegations. However, in the Applicant's motion to dismiss dated 06/30/2011 there is not only embedded material but also numerous references to case law and legal argument that argues the merits of the Applicant's position. Opposer argues that it would be disproportionate to allow the Applicant this freedom and for the Opposer not to be able to answer in kind.

4. The Applicant states Opposer's amended pleading includes claims that were dismissed - Opposer flatly disagrees. Opposer confined the amended pleading to exactly those points as were allowed by the Board.

5. The Applicant states Opposer does not comply with the Board's rules or the Federal Rules of Civil Procedure. Opposer submits that those rules were followed, to the letter as far as can be determined.

5a. Again, the Board has been presented with a specious argument to throw the matter out when the Board itself has been able to recognise the clear merits of the case.

5b. There should be some flexibility for moving to trial, if a trial is necessary, in this apparent impasse; and we ask that the Board deliberates in that regard for a possible expedited move to trial, given that the Applicant simply refuses to answer the patently obvious case against them.

6. The Applicant states Opposer again has submitted a notice of opposition in a manner that is so vague and ambiguous that NIKE cannot reasonably be required to frame a responsive pleading. With respect, this is again a specious argument. The alleged facts are clear and given the absence of an answer to the points raised and, instead, yet another plea to the supposed vagueness and ambiguity, Opposer moves the Board to dismiss the Applicant's Application outright, with prejudice.

7. Applicant states that "Opposer again raises claims based on its United Kingdom registration (pp. 1-3), and the *First Niagara* case (p. 3).2 In its order of March 28, 2012, the Board specifically instructed Opposer not to include these claims". In smaller print, Applicant then states, "With regard to the *First Niagara* case, after discussing it at length as a basis for the opposition (p. 3), Opposer then attempts to skirt the issue of non-compliance with the Board's order by adding that he is

not citing it as a 'standalone reason to oppose.' Of course, citing it at all is improper, since case citations are not supposed to be included in the pleading". Again, case citations were raised by the Applicant in their opposition notice dated 6/30/2011. It would be disproportionate for the Applicants to be able to introduce these into proceedings and for the Opposer to be denied the similar privilege.

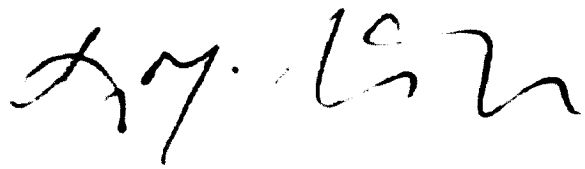
8. Applicant states that "NIKE is in the untenable position of having to respond to an improper pleading without itself violating the Board's rules of procedure". It would be a very simple matter to answer each point in turn: the Opposer has standing; clearly alleges transparent priority; and offers a clear basis for likelihood of confusion. If the Applicant yet again wishes to appeal to the Board to skirt the case against it and instead appeal to specious arguments of vagueness and ambiguity then we ask that the Board no longer indulges Nike's refusal to answer the clear case before it.

9. Conclusion

For the reasons set forth above, Opposer requests that the Trademark trial and Appeal Board summarily dismisses the Applicant's Trademark application or move to an expedited resolution at trial.

Respectfully submitted,

Mr. Christopher Anthony McGrath.



24 August 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of August, 2012, a true and complete copy of the foregoing OPPOSER'S AMENDED OPPOSITION has been served by email on the Defendant at: hminsker@bannerwitcoff.com, bwlitdocket@bannerwitcoff.com to be followed by first class registered prepaid post to:

Correspondence: HELEN HILL MINSKER
BANNER & WITCOFF LTD
TEN SOUTH WACKER DRIVE, SUITE 3000
CHICAGO, IL 60606
UNITED STATES

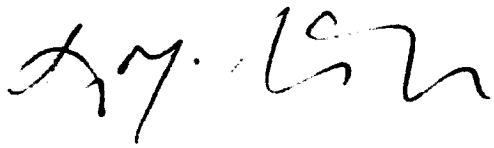
And that similar service of OPPOSER'S AMENDED OPPOSITION was made by email on 24 August 2012 with follow-up first class, registered prepaid post to the United States Patent and Trademark Commissioner for Trademarks Office PO BOX 1451, Alexandria, VA 22313-1451.

By: /Christopher A McGrath/

STATEMENT OF TRUTH:

Opposer believes the facts stated in this AMENDED OPPOSITION NOTICE between (1) CHRISTOPHER ANTHONY McGRATH, (the Opposer) - and - Nike, Inc. (the Defendant) are true.

Signature of Opposer:



Date: 24 August 2012

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