Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA430890**

Filing date: **09/16/2011**

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

Proceeding	91201201
Party	Defendant Universal Master Products Limited
Correspondence Address	JEFFREY H GREGER LOWE HAUPTMAN HAM & BERNER LLP 1700 DIAGONAL RD , SUITE 300 ALEXANDRIA, VA 22314-2866 UNITED STATES
Submission	Answer
Filer's Name	Jeffrey H. Greger
Filer's e-mail	jhgreger@ipfirm.com
Signature	/jhg/
Date	09/16/2011
Attachments	3CUBE Answe.pdf (5 pages)(137440 bytes)

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

In the matter of U.S. Application Serial No. 85/030,652

Applicant: Universal Master Products Limited

Mark: **3CUBE**

Publication Date: April 19, 2011

eCube Solutions, LLC Opposer, v. Universal Master Products Limited Applicant	)	Opposition No.: 91201201

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

COMES NOW Applicant, Universal Master Products Limited, (hereinafter also referred to as Applicant) and Answers the allegations in the above-identified Opposition according to the numbered paragraphs in the Opposition.

1. Admitted.

2. Admitted.

3. Insufficient information to admit or deny therefore denied.

4. Denied and clarified that Opposer is currently listed as the owner of the identified Registration No. 3805518 according to the USPTO records but Applicant avers herein that Opposer is not the rightful owner of the registration or the mark which it represents.

5. Admitted.

6. Admitted.

7. Admitted.

8. Denied and clarified that the mark eCube is a distinctive mark in accordance with the trademark continuum but the distinctiveness is not associated with goods or services authorized or otherwise legally sponsored or affiliated with the Opposer.

9. Denied and clarified that the Application opposed herein, Serial No. 85030652 was filed on May 5, 2010 and the registration relied upon by Opposer, Registration No. 3805518 matured to registration on June 22, 2010.

10. Insufficient information to admit or deny therefore denied, further denied that the mark relied upon by Opposer, namely eCube, is owned by Opposer.

11. Insufficient information to admit or deny therefore denied, further denied that the mark relied upon by Opposer, namely eCube, is owned by Opposer.

12. Insufficient information to admit or deny therefore denied, further denied that the mark relied upon by Opposer, namely eCube, is owned by Opposer.

13. Admitted and clarified that the goods listed are included in the goods listed in paragraph 3 as defined by Opposer, otherwise denied.

14. Applicant admits that "temperature mimicking devices which mimic the temperature of food in a refrigeration system and reduce the effect of air temperature fluctuations on the

refrigerator control thermostat" are similar goods to the goods identified in the '652 Application subject of the instant Opposition, otherwise denied.

15. Insufficient to admit of deny therefore denied.

16. Insufficient to admit of deny therefore denied.

17. Insufficient to admit of deny therefore denied.

18. Admitted and clarified that Applicant received communications from Opposer, Applicant contests Opposer's claim to perceived rights in "Opposers Mark," and further any reference to "cease and desist" has no bearing in a Board proceeding.

19. Denied and clarified that the mark eCube relied upon by Opposer, although a distinctive mark on the trademark continuum, is not a famous mark.

20. Denied and clarified that the mark eCube relied upon by Opposer, although a distinctive mark on the trademark continuum, is not a famous mark now nor was it famous prior to the filing date of the application opposed in this matter.

21. Insufficient to admit of deny therefore denied.

AFFIRMATIVE DEFENSES

1. Opposer relies on a registration which it filed and matured in bad faith knowing prior to the time the registration was issued that Opposer had no rights to maintain a claim of exclusive ownership of the registered mark upon which it relies.

2. Opposer's perceived rights, if any, to use the mark eCube as a trademark or trade name were derived from an agreement between Applicant and its distributor and any

perceived rights in trademark were terminated when Applicant terminated its agreement with its distributor.

3. Opposer's claims are barred by the doctrine of unclean hands in view of Opposer maturing a registration for the mark eCube despite knowledge that Opposer owned no exclusive rights to the trademark registration it matured and as Opposer initially declared in its application to the U.S. Patent and Trademark Office.

WHEREFORE, Applicant prays the Board dismiss Opposer's opposition and deny Opposer the relief it requests.

Respectfully submitted,

LOWE HAUPTMAN HAM & BERNER, LLP

Jeffrey H. Greger
Attorney for Applicant

1700 Diagonal Road, Suite 310
Alexandria, Virginia 22314
Tel: (703) 684-1111
Fax: (703) 518-5499
September 16, 2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer has been forwarded to Opposer currently listed contact person according to the current records as contained in the U.S. Patent and Trademark Office records as appears below, by email or fax pursuant to agreement between the parties this day, September 16, 2011.

Tom ONeill
eCube Solutions, LLC
5 Cold Hill Road, South Building 20
Mendham, NJ 07945

Jeffrey H. Greger